

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 18

DAVID FRIEDBERG, PETITIONER,

vs.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 28, 1953

CERTIORARI GRANTED JUNE 7, 1954

SUPREME COURT OF THE UNITED STATES

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**IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO, EASTERN DIVI-
SION**

26 USC 145 (b)

UNITED STATES OF AMERICA

VS.

DAVID FRIEDBERG

INDICTMENT No. 5972—filed December 15, 1950

The Grand Jury charges:

Count 1

That on or about the 15th day of March, 1945, in the Southern District of Ohio, Eastern Division, at Columbus, Ohio, David Friedberg did willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1944, by filing and causing to be filed with the Collector of Internal Revenue for the Eleventh Internal Revenue Collection district of Ohio, at Columbus, Ohio, a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of \$2,735.97 and that the amount of tax due and owing thereon was the sum of \$152.00, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$15,640.68, upon which said net income he owed to the United States of America an income tax of \$4,559.71.

In violation of Section 145(b), Internal Revenue Code; 26 USC Section 145(b).

[fol. 2]

Count 2

That on or about the 15th day of March, 1946, within the Southern District of Ohio, Eastern Division, at Columbus, Ohio, David Friedberg did willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the

calendar year 1945, by filing and causing to be filed with the Collector of Internal Revenue for the Eleventh Internal Revenue Collection District of Ohio, at Columbus, Ohio, a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of \$2,012.36 and that the amount of tax due and owing thereon was the sum of \$39.00 whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$21,669.18, upon which said net income he owed to the United States of America an income tax of \$7,694.21.

In violation of Section 145(b), Internal Revenue Code; 26 USC Section 145(b).

Count 3

That on or about the 15th day of January, 1947, in the Southern District of Ohio, Eastern Division, at Columbus, Ohio, David Friedberg did willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Eleventh Internal Revenue Collection District of Ohio, at Columbus, Ohio, a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of \$4,943.93 and that the amount of tax due and owing [fols. 3-6] thereon was the sum of \$470.00, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$23,035.34, upon which said net income he owed to the United States of America an income tax of \$7,447.80.

In violation of section 145(b), Internal Revenue Code; 26 USC Section 145(b).

Count 4

That on or about the 15th day of January, 1948, in the Southern District of Ohio, Eastern Division, at Columbus, Ohio, David Friedberg did willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Eleventh Internal

Revenue Collection District of Ohio, at Columbus, Ohio, a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of \$7,223.05 and that the amount of tax due and owing thereon was the sum of \$1,355.57, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$42,276.91, upon which said net income he owed to the United States of America an income tax of \$19,590.02.

In violation of Section 145(b), Internal Revenue Code; 26 USC Section 145(b).

Loren G. Windom, Assistant United States Attorney.

[fol. 7] IN UNITED STATES DISTRICT COURT

Transcript of Proceedings at Trial—filed July 1, 1952
HEARING

Before The Honorable Mell G. Underwood and a jury,
commencing December 11, 1951.

APPEARANCES:

Col. Loren G. Windom, on behalf of the Government.
Justin L. Sillman and Joseph S. Platt, on behalf of the defendant.

TUESDAY MORNING SESSION

December 11, 1951

(A jury was duly impaneled and sworn.)

COLLOQUY BETWEEN COURT AND COUNCIL

The Court: Do you desire a separation of witnesses in this case?

Mr. Sillman: We do, Your Honor.

Col. Windom: Mr. Sauer will not be a witness, Your Honor. I would like to have Mr. Clager and Mr. Nerny, our accountants, remain in, and I assume you desire your accountant.

Mr. Sillman: We will not ask our accountants to remain in this trial. They will testify.

The Court: Do you object to either of the two gentlemen remaining?

[fols. 8-27] Mr. Sillman: Of course, Your Honor well knows the purpose of a separation of witnesses, and all I can say to Your Honor is that in the preparation of our case we did not intend to have either Certified Public Accountants, Henry Weiss, who will testify, or Mr. Guy Forsythe, sit at our table during the progress of the case to hear testimony of other witnesses. I think in fairness to the defendant the case should be conducted the same way on both sides. Mr. Sauer, of course, is not a witness and we have no objection to his presence in the court room because he is not a witness.

The Court: All those who expect to testify will retire to the witness room and remain there until called.

Mr. O'Donnell: If the Court please, I thought it has always been the custom—

The Court: The Court will permit one Government agent to remain and the defendant may have one accountant remain in the court room.

Mr. O'Donnell: We should like Mr. Clager as the Government representative.

The Court: Very well, Mr. Clager will remain.

[fol. 28] HENRY W. WEISS, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Col. Windom:

Q. Will you state your name, please?

A. Henry W. Weiss, W-e-i-s-s.

Q. What is your address, Mr. Weiss?

A. 8 East Long Street.

Q. What is your occupation?

A. Certified Public Accountant.

Q. I will ask you whether or not you have ever been employed by the defendant David Friedberg?

A. I have.

Q. Over what period of time, sir?

A. '44 to—well, up to the present time.

Q. I will hand you what has been marked Government's Exhibits 3 (a), (b), (c), (d), and ask you if you can identify those.

[fol. 29] (Government's Exhibits 3 (a), 3 (b), 3 (c), 3 (d) were marked for identification.)

A. Yes, these are the individual tax returns, 1944, 1945, 1946 and 1947, and I prepared those.

Q. Are those your personal papers, Mr. Weiss?

A. Those are my copies of the preparation of the income tax returns.

Q. Those are your copies which you delivered to us at our request, is that correct, Mr. Weiss?

A. That's right.

Q. Go through them, please. What is the first, 3 (a), what is that form, please?

A. This is the 1944 return.

Q. For David Friedberg?

A. Yes.

Q. Was that return prepared by you, Mr. Weiss?

A. I prepared it.

Q. What was the basis of that return?

A. This schedule of income and expense furnished by the defendant, Mr. Friedberg.

Q. Will you explain what you mean by that, sir?

A. Well, he made up a recapitulation of income and of his expense and turned it over to me, from which to prepare the return.

Q. Did you yourself make any check of his books and records?

[fol. 30] A. No.

Q. Do I understand, then, that the figures shown in the return for 1944 were furnished to you by Mr. Friedberg?

A. That's right.

Q. Are you referring to David Friedberg seated at the table here?

A. Yes.

Q. Refer to the next paper, Exhibit 3 (b), please, and tell us what that is, sir?

A. This is the 1945 return of David Friedberg.

Q. Where did you get the information to prepare that return, please?

A. From the same way as '44.

Q. Did you make any check of Mr. Friedberg's books or records, sir?

A. No.

Q. Do I understand that he supplied you the figures which you used in that return?

A. Yes.

Q. Referring now, please, to the next one, Exhibit 3 (c). Will you explain what that is, Mr. Weiss?

A. That's the 1946 return of David Friedberg.

Q. How did you get the information to prepare that return?

A. He furnished the information.

Q. Did you make any check of his books and records that year?

A. No.

[fols. 31-40] Q. Referring now to the next document, sir, 3 (d). Will you explain what that is, please.

A. This is the 1947 return of David Friedberg.

Q. How did you get the data to prepare that return, please?

A. He furnished the data.

Q. Did you make any check of his books and records in that year?

A. No.

Q. Is that another case where Mr. Friedberg furnished you the figures which you used?

A. Yes, he furnished the figures.

Q. Mr. Weiss, has Mr. Friedberg ever asked your advice in matters pertaining to the keeping of the records of his business since he has become the sole proprietor of it?

A. Oh, we probably discussed that from time to time. I just don't recall any particular instance.

Q. Did you ever give him any advice with relation to the keeping of books and records, sir?

A. No.

Col. Windom: Cross examine.

[fols. 41-42] CHARLES W. MONTGOMERY, recalled to the stand, testified further as follows:

Direct examination.

⑤

By Col. Windom:

Q. You are the same Mr. Montgomery who previously testified in this case?

A. Yes, sir.

[fols. 43-60] Q. How, which of those two documents, Government's Exhibit 1 (f) or Defendant's Exhibit 1, reflects wholly and only to David F. Friedberg here on trial?

A. Government's Exhibit 1 (f).

[fol. 61] EVELYN KLEIN, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Col. Windom:

Q. State your name, please?

A. Evelyn Klein.

Q. Now, speak quite loudly and directly at the jury. What is your address?

A. 50 East Broad Street.

Q. Where are you employed?

A. State Mutual Life Assurance Company.

Q. What is your capacity there, please?

A. Cashier in charge.

(Government's Exhibits 4 (a) and 4 (b) were marked [fol. 62] for identification.)

Q. I hand you what has been marked as Government's Exhibit 4 (a) and 4 (b) and ask you if you can tell us what those are, please?

A. Well, now, these are ledger records of loans that have been made by David Friedberg, and it states the date that the loan was made and any payments that were made on it and when it was paid in full.

Q. Now, referring, please——

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Sillman: Will you permit me to interrupt. Again, if the Court please, not that it makes a bit of difference to me personally, but these records of this witness, and if the others are called in order, five, six or seven other witnesses, we have agreed to stipulate those facts. There isn't any question about them and the records may be offered in evidence with the explanation stated without the necessity of calling the witnesses.

Col. Windom: This doesn't pertain to the net worth statement. This does not pertain to the stipulation.

Mr. Sillman: You mean the insurance was not carried into the net worth?

The Court: Does counsel for the Government agree to the stipulation?

Col. Windom: No, sir. I am merely using the young lady in charge to tell us what is on the exhibits.

The Court: They speak for themselves, Col. Windom. Counsel for the defendant waives any question of authenticity, do you not?

[fol. 63] Mr. Sillman: That is correct, Your Honor. And not only that, but the total amount is in the net worth statement and you just have a maze of material here to add up to one figure.

The Court: Ladies and gentlemen of the jury, the Court is not adjourning but I intend to permit you to go at this time. You must leave the court room. Come back here at ten o'clock tomorrow. During the intermission you must follow the instructions heretofore given you by the Court. You are not to discuss this case among yourselves, you are not to permit anyone to discuss the case with you or in your presence. If anyone should attempt to do so you will advise the Court immediately. You are not to form or express an opinion until the case is finally submitted to you for your consideration. You may leave at this time. The Court instructs you to remain out of the court room.

(In the absence of the jury.)

The Court: It is not within the province of the Court to advise counsel for the Government or counsel for the de-

defendant as to how you should try your case. However, it seems obvious to the Court that there may be a great loss of time in identifying exhibits which counsel for the defendant is willing to admit in evidence. The exhibit speaks for itself when it is once admitted.

The Court desires to hear from counsel for the Government why there is a necessity for having them identified when there is no question being raised and counsel for the defendant is perfectly willing to admit their authenticity and identity.

Col. Windom: Let me preface my remarks by saying that [fol. 64] I do not believe the United States has taken over fifteen minutes of this trial so far. Cross examination has taken the bulk of the time. These exhibits, if they will waive jury trial, will speak for themselves and we will submit them to Your Honor.

The Court: You have no right to tell them to waive anything.

Col. Windom: I am not telling them to.

The Court: The Court is merely inquiring of you why we should take up endless time in having a witness identify an exhibit when counsel says, "We admit its identity, we admit its authenticity, we admit it may be introduced in evidence."

Col. Windom: I have only taken a great minority of the time.

The Court: We are only commencing. You have many of these exhibits.

Col. Windom: How are we going to get the import of these exhibits to the jury?

The Court: Certainly the exhibits speak for themselves and when once in evidence you can do what you please.

Col. Windom: We don't save any time, then, Your Honor.

The Court: This witness can explain what the exhibits says. The exhibit speaks for itself. All she can do is identify it. If properly identified it is admissible in evidence.

Col. Windom: I can't read it any faster than she can.

The Court: The Court is wondering why it is necessary to call a witness to testify that this exhibit is so and so and

such and such, when counsel admits it is exactly what you say it is.

[fol. 65] Col. Windom: As I explained to Your Honor, the very brief reason is that the defendant is trying to stipulate us out of Court and we don't propose to so stipulate.

The Court: Counsel for the Government may have a perfectly valid reason, although it is not clear to the Court.

Col. Windom: As we go on there will not be any explanation necessary. When we get into bonds and things like that we will put no one on. Here we have an exhibit which to me means the young lady is going to have to read it. Those are not my forms. After all, who can better explain it to Your Honor and to the jury, Mr. Sillman or I? They are not our records, they are her's.

The Court: If counsel is perfectly willing to admit what it is, why the necessity of explanation by this witness?

Col. Windom: Simply because she can state it as briefly as I can.

Mr. Sillman: May I say to the Court that I have absolutely no personal interest as trial lawyer in this case, nor does Mr. Platt. Whatever Your Honor does is entirely satisfactory to us. We have nothing to gain or lose one way or the other. But I note from the list that there are about fifteen witnesses. I dare say, and I am not directing this remark to this particular witness, she is just like the many others—I dare say this witness and many others could do nothing more than identify the records. She probably didn't prepare it herself anyhow. And if we want to get into that question, I suppose I ought to, instead of stipulating, cross examine these witnesses to determine if they are proper persons to identify the records.

[fol. 66] Mr. O'Donnell: Would this expedite matters. Say, for instance, it has been agreed that Exhibits 10, 11 and 12 be offered in evidence, and if counsel says it is so agreed the Court will admit them. Then we can say, "At this time we would like to read from Exhibits 10, 11 and 12.

The Court: There is nothing to prevent you from doing so.

Col. Windom: It does not save any time.

The Court: Mr. O'Donnell has said in about a minute

what you have asked this witness to say in at least three or four minutes.

Now, as I said a moment ago, I am not telling you how to try your case. That belongs purely within the province of the United States Attorney. However, it seems to the Court that to expedite this trial and save the time of the Court and the litigants that there is no necessity of calling a witness to tell the Court and jury that this is Exhibit B so and so and such and such, when you can mark it for identification, say what it is, and counsel admit it, and introduce it in evidence. Then if you want to read it to the jury or any part of it, you have a perfect right to do so.

You may think it over until tomorrow morning.

Col. Windom: Do you know what that document is?

Mr. Sillman: I don't think it has a bit of connection with this case. I haven't seen it and I don't even care about it. I am assuming that if the Government says that it is an authentic record, all right. That is how much importance this record and all of the other fifteen witnesses have, so far as I am concerned. I have never seen it and I am still stipulating.

[fol. 67] The Court: The Court cannot compel and does not intend to imply that it wants to compel counsel. It is merely asking counsel, respectfully, whether or not we could not speed up the trial of this case without harming the case by admitting certain documentary evidence about which there is no disagreement as to identity or authenticity into evidence, and then you may do as you please with them after they are in evidence.

The Court intends to adjourn until tomorrow morning at ten o'clock.

WEDNESDAY MORNING SESSION

December 12, 1951

(Before the Court and Jury.)

Col. Windom: I will try proceeding under the defendant's theory.

The Court: I want the Government to understand that you may proceed as you please. It is merely a suggestion upon the part of the Court.

Col. Windom: This will be a test.

OFFERS IN EVIDENCE

The United States offers in evidence Exhibits 4 (a), being a photostat of the record of the State Mutual Life Assurance Company, 50 East Broad Street, Columbus, Ohio.

Is it stipulated that Exhibit 4 (a) shows that the defendant David Friedberg on January 27, 1931 borrowed the [fol. 68] amount of \$250 upon a policy of insurance he had in that company and repaid that loan on May 1, 1931?

Mr. Sillman: If the record so says, it is so stipulated. I haven't seen it, and we so stipulate. I am taking your word.

Col. Windom: To proceed I must have an unequivocal stipulation.

The Court: Have you had the opportunity, Mr. Sillman, to examine these exhibits?

Mr. Sillman: We have not had the opportunity of examining any of those records. I want to make this distinction. I had said to Your Honor that instead of having witnesses called to identify all of these, that we would stipulate that they were the records that they indicate. Now, there may be material in these records, there may be substance that is not material. It is one thing to stipulate that a document represents the true document of such and such a company.

The Court: In other words, you are only stipulating as to the authenticity, not as to the relevancy.

You had better proceed as you indicated.

Mr. Sillman: If we were given an opportunity to those we might stipulate.

Col. Windom: Let's straighten out one thing. Were you or were you not given the opportunity to examine every one of these exhibits on that list, which is a duplicate of ours, at least two or three days ago?

Mr. Sillman: I don't recall any examination.

The Court: How many of these exhibits will you have?

[fol. 69] Mr. Sillman: We have never been shown those.

Col. Windom: Approximately 41. Some of them have sub exhibits.

Mr. Sillman: Judge, I am going to put it this way. Whether it is material or it is not material, to save the

time let it all go in. We will stipulate as you say, that they are authentic records and may be admitted without objection, unequivocally admitted without objection.

The Court: Have they been marked for identification?

Col. Windom: They are all marked.

Mr. Sillman: I only wanted to explain that we haven't seen them.

The Court: With that understanding, are you willing to mark them for identification purposes?

Col. Windom: They are all marked and they have the list and the explanation of what they are.

The Court: Are you offering them all? If so, they will be admitted in evidence.

Col. Windom: No, sir, not unless it is stipulated—

The Court: They are in evidence for whatever they are. They speak for themselves. If the Government is willing to mark them for identification purposes, when once in evidence, they are evidence and will be considered as evidence in the case.

Col. Windom: Your Honor, that isn't quite true. Many of these records—

The Court: You can use them as you please. They are [fol. 70] in evidence.

Col. Windom: If my statement is incorrect, that is one thing. Now, our position is, either this shows the loan which I have referred to and its repayment or it doesn't. If there is any question—

The Court: It shows exactly what it shows, no more, no less.

Col. Windom: How am I going to show that?

The Court: It is not subject to explanation, it speaks for itself.

Col. Windom: The best evidence, of course, is the testimony of the person who made the loan. The records are secondary evidence from that standpoint. Now, we have the photostats of the originals by agreement. What I want to show is that this: for example, if Your Honor, without testimony or stipulation—

Mr. Sillman: Well, the witness couldn't testify to more than it shows.

Col. Windom: That's what we are trying to get you to stipulate.

The Court: There is no objection to the fact that this Exhibit 4 (a) is a loan negotiated by the defendant with State Mutual Life Assurance.

Col. Windom: On a given day and repaid on a given day.

The Court: Does the exhibit not show that it was given on a certain day?

Col. Windom: That is correct.

[fol. 71] The Court: You can pick up the instrument, certainly, and read the instrument. But, you do as you please about it.

Col. Windom: Let me ask this question, Mr. Sillman. Is my offered stipulation agreeable?

Mr. Sillman: Your stipulation is not put the way the Court has put it. I don't want to quibble with you. I merely said to you that we will stipulate that each of these exhibits that you would produce by some fifteen or twenty witnesses are true exhibits, accurate exhibits, and that they show what they show and may be admitted without objection. And I said, as an aside, merely, to the Court that we are doing that without ever having examined them in any detail, which doesn't affect any stipulation at all.

Col. Windom: Let me start over. Is it stipulated that Exhibit 4 (a) shows that the defendant borrowed the sum of \$250 from the State Mutual Life Assurance Company on January 27, 1931 and repaid it on May 1, 1931?

Mr. Sillman: Yes, sir.

The Court: Does not the exhibit show exactly what you say?

Col. Windom: Well, it is my understanding it does.

The Court: You cannot have a different understanding. The exhibit, if admissible, will speak for itself. Whatever it shows it will show, and you may call that to the attention of the jury. You may read the exhibit if you so desire after it is once in evidence.

Col. Windom: We are in this situation, that after we rest I at that time have no positive agreement, no positive evidence, [fol. 72] as to what that shows except the document itself. Where am I?

The Court: How do you expect to supplement the instru-

ment? The instrument is a written instrument, it shows what it shows, it speaks for itself. Oral testimony would not be permitted to modify in any manner what the instrument shows. Now, after the instrument is once in, Col. Windom, you are free to use it. It is in its entirety as evidence in this case, the same as any other evidence.

Col. Windom: You are offering me the right to argue as against the right to produce evidence.

The Court: What evidence are you producing except the written instrument? Do you expect to have oral evidence?

Col. Windom: I recall when Your Honor has permitted the United States to produce witnesses to explain photographs.

The Court: If you have something like that in mind, the Court is not circumscribing you. You are presenting this case to this jury and you may present it as you see fit and proper. The Court is just trying to save the time of all parties interested, including the litigants, the Court and the jury, but you may proceed as you please. The Court will rule as objections are made.

Col. Windom: It is my understanding that that stipulation is denied?

Mr. Sillman: I just got through making it, not denying it.

Col. Windom: We are not talking about the same thing.

The Court: Gentlemen, I think it is much ado about nothing. Counsel for the defendant says you may introduce [fol. 73] it; he is not objecting; he is admitting everything you have in the instrument.

Col. Windom: He is admitting everything except the fact.

The Court: You may proceed.

Col. Windom: The United States offers 4 (a) in evidence?

The Court: Is there objection?

Mr. Sillman: None.

The Court: It is admitted.

(Government's Exhibit 4 (a) is received in evidence.)

Col. Windom: The United States offers 4 (b) in evidence?

The Court: Is there objection?

Mr. Sillman: None.

The Court: It is admitted.

(Government's Exhibit 4 (b) is received in evidence.)

Col. Windom: The United States desires to read 4 (a) and 4 (b).

The Court: You have a right to do so. They are in evidence.

Col. Windom: Name, David Friedberg. Agency, Columbus, Ohio. Policy No., 308,174. Date of Check, 1-27-31.

The left column is headed Interest Account. May 1, 1931 entry \$1.50. May 8, 1931 entry \$1.79. Six Mo. Interest \$7.50 and \$1.50. Loan Amt. \$250, \$50. The \$250 appears opposite the date April 11, 1931. Payments: \$200, May 1, 1931 payment of \$50, apparently showing in full payment.

[fol. 74] Exhibit 4 (b). Name, David Friedberg. Agency, Columbus, Ohio. Policy No. 246,241. Date of Check 9-18-31. There are many entries upon this card. Under the column Loan Amt, \$300. The next entry is \$400. The \$300 appears opposite the date December 15, 1931; \$400 opposite the date December 24, 1941. The next date, September 28, 1932 appears the entry \$704.88.

Under the Payment column appears payments on January 27, 1933, \$227.33; February 7, 1933, \$227.55; June 8, 1933, \$9.26; August 17, 1933, \$117.60; September 9, 1933, \$200.00; September 7, 1934, \$123.14; May 20, 1935, \$100, showing repayment of the loan.

(Government's Exhibit 2 (O) is marked for identification.)

Col. Windom: The United States offers in evidence Exhibit 2 (o).

The Court: Is there objection?

Mr. Sillman: None, Your Honor.

The Court: It may be admitted.

(Government's Exhibit 2 (o) is received in evidence.)

Col. Windom: I might say, because of the way we have these marked and because we both have lists, we are skipping around in exhibit numbers rather than taking them consecutively.

The Court: If these exhibits have some designation or heading I think it ought to be mentioned at the time they

are admitted. Is there anything to identify them other than——

[fol. 75] Col. Windom: We have them marked with stickers in the upper right hand corner.

Is it stipulated, Mr. Sillman, that Exhibit 2 (c) shows payments on Policies Nos. 246,241 and 308,174 in the State Mutual Life Assurance Company for the years 1944, 1945, 1946 and 1947?

Mr. Sillman: It is. If that is what it shows.

Col. Windom: The United States offers in evidence Exhibits 5 (a) and 5 (b).

(Government's Exhibits 5 (a) and 5 (b) are marked for identification.)

The Court: Is there objection?

Mr. Sillman: None, Your Honor.

The Court: They will be admitted.

(Govt's Exhibits 5 (a) and 5 (b) are received in evidence.)

Col. Windom: Is it stipulated that Exhibits 5 (a) and 5 (b) show a suit by the Dispatch Printing Company against David F. Friedberg, 131 North Nelson Road, Columbus, Ohio, for the sum of \$13.76, that default judgment was rendered against the defendant David F. Friedberg in the amount of \$13.76 and that execution was issued upon that judgment and returned "no property found"?

Mr. Sillman: We are not objecting to the admission of that evidence, and if you are reading from the——

Col. Windom: I will read it. The docket sheet is headed "The Municipal Court of Columbus—Civil Docket No. 414. [fol. 76] The Dispatch Printing Co., Inc., 34 South Third St., Columbus, Ohio, Plaintiff, David F. Friedberg, 131 N. Nelson Road, Columbus, O., defendant."

I will omit reading the attorneys and the cost portion of it.

"Action Account \$13.76.

"Feb. 26, 1936, Petition filed and summons issued.

"Feb. 28, 1936, Summons returned endorsed; on the 27th day of Feb. 1936, I served this writ on the within named David F. Friedberg by mailing a true and certified copy

thereof, with all endorsements thereon to his usual place of residence, 131 N. Nelson Rd. Frank B. Garrish, Bailiff. Fees 80¢.

"Mar. 17, 1936. Case called, defendant not appearing default judgment for plaintiff, \$13.76 and costs of suit.

"Mar. 28, 1936. Issued execution to Bailiff.

"Mar. 31, 1936. Writ returned Mar. 31, 1936. Nothing found to levy on. Does not own Buckeye Tailoring Co. A. A. Lanneck, Ex. Bailiff.

"Jan. 29, 1940. Issued Execution to Bailiff.

"Mar. 7, 1940. Received this Writ Jan. 29, 1940. Returned same showing no goods or chattels found whereon to make levy. J. M.—I can't read it—Ex. Bailiff."

That is 5 (a) that I read. The complete file is 5 (b).

(Govt's Exhibits 6 (a) and 6 (b) marked for identification.)

Col. Windom: The United States offers in evidence Government's Exhibit 6 (a) and 6 (b), being the Common Pleas foreclosure case.

[fol. 77] The Court: Is there objection?

Mr. Sillman: None, Your Honor.

The Court: They will be admitted.

(Govt's Exhibits 6 (a) and 6 (b) are received in evidence.)

Col. Windom: This being lengthy, can it be stipulated that Exhibits 6 (a) and 6 (b) are the records of the foreclosure suit against the defendant David Friedberg?

Mr. Sillman: They are.

Col. Windom: Showing the foreclosure on the property at 131 North Nelson Road, if I read the address correctly.

Mr. Sillman: That is correct.

Col. Windom: That a deficiency judgment of \$3,570.38 was returned in that case.

Mr. Sillman: That is correct.

Col. Windom: Execution was issued on August 16, 1939 and returned by the Sheriff, nothing found.

Mr. Sillman: That is correct.

(Govt's Exhibit 7 was marked for identification.)

Col. Windom: The United States offers in evidence Government's Exhibit 7, being the photostatic copy of the financial statement of the defendant to the National Life Assurance Company of Vermont.

Mr. Sillman: No objection, Your Honor.

The Court: It will be admitted.

[fols. 78-128] (Govt's Exhibit 7 is received in evidence.)

Col. Windom: Is it stipulated that in this financial statement defendant stated he had \$150 cash on hand as of October 20, 1939?

Mr. Sillman: If it so states it is so stipulated; if it so shows.

Col. Windom: I would like to read the first entry.

"Personal Financial Statements. Property. Property owned. Bank accounts, On hand \$150. Cashier's Check with Nat'l Life Ins. Co. \$2000. Investments \$2000. Household Goods \$1500. Automobile \$650. Life Ins. \$2500 and \$4650."

[fol. 129] EDWARD T. LOMBARD, recalled to the stand, testified further as follows:

Direct examination.

By Col. Windom:

Q. State your name.

A. Edward T. Lombardo.

Q. What is your occupation, Mr. Lombardo?

A. I am a lawyer.

Q. Where?

A. In Columbus, Ohio.

Q. How long have you been admitted to practice?

A. Since January of 1933.

Q. Directing your attention to—

Mr. Sillman: If the Court please, forgive me for interrupting, but if this line of questions—

The Court: Let us see.

Mr. Sillman: If it is going to relate to that which was discussed before the Court, we object to the line of questions to begin with.

The Court: There is no line at this point except that this gentleman is a lawyer and has been one since 1933.

Q. Directing your attention to the latter part of 1933, I will ask you whether or not you had any connection with the Home Owners Loan Corporation?

A. Yes, I was employed—

[fol. 130] Mr. Sillman: Object, if the Court please.

The Court: Overruled.

A. I was employed by the Home Owners Loan Corporation on a salary basis starting October 23, 1933.

Q. In what capacity?

A. I was Deputy State Counsel.

Q. Are you familiar with the relations and policies of the HOLC in relation to the granting of loans in 1933?

A. Yes, I was.

Q. What if any connection, Mr. Lombardo, did you have with the granting or handling of loans in late 1933?

A. My duties were to examine, first, the opinion of title and then to check and determine whether or not an applicant was eligible for refinancing.

Q. What were the relations or policies in respect to eligibility?

Mr. Sillman: I object on the ground of irrelevancy.

The Court: Sustained. The regulations are the best evidence.

Q. Let me ask you, Mr. Lombardo, whatever requirements there were, without referring to them specifically how were they set up?

A. They were set up by instructions from Washington in the way of memorandums and bulletins issued to the various state counsel, who in turn sifted it down to the deputies.

Q. On that basis, what were those instructions?

Mr. Sillman: Object. I don't see any relevancy, Your Honor. I don't think it is important.

[fol. 131] The Court: What instructions are you referring to?

Col. Windom: The matter of eligibility for loans.

The Court: There may be a lot of instructions on eligibility.

Col. Windom: Eligibility for loans.

The Court: We are not trying a loan case, we are an income tax evasion case. The objection is . . . The regulations are the best evidence of what the . . . anyhow.

Col. Windom: He has testified they were letters or instructions, not regulations.

The Court: The letters are the best evidence, are they not? I don't know on what basis counsel made his objection.

Col. Windom: Well, he made it on the basis of relevancy and it is wrong on the basis of relevancy because David Friedberg's loan was granted within a few days of the time I am questioning about.

The Court: Go ahead. The objection has been sustained.

By Col. Windom:

Q. We are referring now to October 1933, the matter where a loan was submitted to you for approval and processing. Did you consider the eligibility of both *an* husband and wife or just one of them?

Mr. Sillman: Object.

The Court: There is nothing in the record at this point that shows a loan was submitted to him. You are assuming something in your question which has not been shown to exist. You may ask him whether or not one was. The objection is sustained.

Col. Windom: I think I did ask him that.

[fol. 132] Q. Tell us again, what did you do for HOL in October 1933?

A. I examined title opinions submitted by lawyers on behalf of applicants for a mortgage loan and determined the eligibility of the applicant for refinancing.

Q. Now, in determining that eligibility did you consider only a husband or the husband and wife both?

Mr. Sillman: Object. No relevancy.

The Court: The objection will have to be sustained. I don't see the relevancy in this case. Now, if he was handling something which pertains to this case or may have

bearing on this case you may ask him about that. The objection is sustained.

Q. Mr. Lombardo, I will ask you whether in August and September 1939 you had occasion to handle the settlement of a deficiency judgment against the defendant David Friedberg?

Mr. Sillman: I will object to that.

The Court: Overruled.

A. I did.

Q. What was the nature of that settlement, please?

Mr. Sillman: Again, I object.

The Court: If he knows he may answer. He says he handled the settlement. If he has knowledge of what the settlement was he may so testify.

Mr. Sillman: That is, personal knowledge.

The Court: You have personal knowledge, do you, Mr. Lombardo?

[fol. 133] The Witness: The only information I have is based on correspondence that has been submitted to me by Mr. Mellman, and the fact that I issued a praecipe for levy and execution back in 1939 in my own handwriting.

Mr. Sillman: Now, I move the Court—

The Court: Yes, the answer is not responsive to the question, Mr. Lombardo.

Mr. Sillman: And I respectfully request the Court to instruct the jury.

The Court: The jury will disregard the answer.

Q. I hand you a document which has been marked Government's Exhibit 8 (a) and ask you if that, after you read it, refreshes your recollection?

Mr. Sillman: I object to that question.

The Court: Overruled.

A. This letter is addressed to me.

The Court: The question is does it refresh your recollection?

The Witness: Yes, it does.

Q. Will you give us such details of that settlement as you remember, please?

Mr. Sillman: Now, if the Court please, I am going to again object. I think that this borders a different field entirely. The witness has been interrogated by the Court.

The Court: I understand as to the written communication, [fol. 134] but this gentleman states that he handled this proposition. Did you not?

The Witness: Yes, sir.

The Court: And that he has personal knowledge of it. He may testify as to what knowledge he has, if any.

Mr. Sillman: But, if the Court please, we had testimony on whether he had any personal knowledge.

The Court: The Court has already ruled on that question. You are not claiming any privilege insofar as this witness?

Mr. Sillman: Not as to independent recollection. That's what I was talking about.

The Court: He may testify as to what knowledge he has, if any.

A. On the basis of this letter and my recommendation to the Home Owners Loan Corporation, the HOLC did settle this deficiency for \$100.

Q. That was the deficiency judgment against Mr. Friedberg you are referring to?

A. Yes, I am.

Mr. Sillman: Now, there was an objection to that question, Your Honor.

The Court: Do you have personal knowledge of this settlement, Mr. Lombardo, as to the amount it was settled for?

The Witness: I don't have any records left in that. The only thing—

The Court: I am asking whether you have personal [fol. 135] knowledge of this settlement.

The Witness: I would say no.

Col. Windom: Or, refreshed recollection, Your Honor.

Mr. Sillman: I move the Court that the answer be stricken and the jury be instructed to disregard it.

The Court: If he has knowledge of this settlement he may so testify. Mr. Lombardo is an attorney; he understands the rules of evidence.

Q. Mr. Lombardo, I will ask you whether or not you did receive the original of Government's Exhibits 8 (a)?

Mr. Sillman: Again, we object.

The Court: Overruled.

A. Yes, I did receive it.

Q. In what capacity, Mr. Lombardo?

A. I was attorney for the Home Owners Loan Corporation.

Q. I will ask you whether or not that letter came to you in your capacity as attorney for the Home Owners Loan Corporation?

A. Yes, sir.

Mr. Sillman: Again I object and move that all of these answers be stricken.

The Court: Overruled.

Q. Did you communicate that information to HOLC?

A. I did.

Col. Windom: The Government offers in evidence Exhibit 8 (a).

[fol. 136] (Govt's Exhibit 8 (a) was offered in evidence.)

Mr. Sillman: We object, Your Honor.

The Court: There is no showing at this time as to whether this is the letter which he received or what has become of the letter which he received. The objection will have to be sustained at this time.

Col. Windom: I withdraw the offer at this time.

Q. Mr. Lombardo, at the time of the receipt of the original of that letter did you maintain a file in relation to the David Friedberg settlement?

A. Yes, I did.

Q. Do you have that file at the present time?

A. No, I do not.

Q. What became of it, sir?

A. I destroyed all of my HOLC files approximately three or four years ago.

The Court: Did the Court understand you to say whether or not you had received the original of this letter?

The Witness: Yes, I said that I did.

The Court: Was this original among the files which you destroyed——

The Witness: Yes, sir.

The Court: ——or not?

The Witness: Yes, it was.

[fol. 137] The Court: And, was the original destroyed with the files?

The Witness: Yes, sir.

Col. Windom: The Government offers Exhibit 8 (a).

The Court: Is there objection?

Mr. Sillman: There certain-- is, Your Honor.

The Court: On what ground?

Mr. Sillman: We object on the ground that it involves privileged communications and on the ground that it involves self-incrimination and all of the grounds that we urged.

The Court: The Court will reserve a ruling on its admissibility. You have a different situation confronting the Court at this time than what you had a short time ago. The Court will hear you further at the proper time.

[fol. 138] Cross examination.

By Mr. Sillman:

Q. Mr. Lombardo, do you have any independent recollection of the transaction in question.

A. As a distinct transaction?

Q. Do you have any independent recollection of it?

A. I would say no.

Q. Do you have any independent recollection of whether you did or did not receive the letter that you hold in your hand?

A. I do not have a distinct recollection of receiving the letter.

Mr. Sillman: That's all.

Col. Windom: That's all.

Mr. Sillman: Now, we object again.

The Court: After refreshing your memory, do you have a recollection of having received the letter?

The Witness: Your Honor, this was eleven years ago, and for me to say that looking at this letter I can testify that I [fol. 139] received the original, I cannot. My memory is not that good. But, it was addressed to me, Your Honor. I was in that building at that address. I was attorney for the Home Owners Loan at that time. I could say and feel sure that I did receive this letter, but to say distinctly on a certain day I picked up this letter, I can't do it. I don't think the Court could.

The Court: The Court is not the witness today. You happen to be the witness, Mr. Lombardo.

I am not quite certain as to what your answer really is as to the receipt of this letter. I think it might be advisable to get the transcript before the Court.

By Mr. Sillman:

Q. Mr. Lombardo, the answer which you gave to the Court, is it based entirely on the fact that your name and address appears on the exhibit you hold?

A. That plus the name and the fact that the record shows; that is, the record in the Common Pleas Court, shows that I issued execution.

Q. So that, from the fact that there is a copy of a letter which has your name on it and the address and other information, that is the basis for your statement to the Court?

A. I would say so.

Q. And, you still say that you have no independent recollection of whether you did or did not receive such a letter?

A. As an independent act, I can't say.

[fol. 140] Q. I am talking about personal independent recollection.

A. That's correct.

Q. The answer is no?

A. That's correct.

ROBERT L. MELLMAN, recalled to the stand, testified further as follows:

Direct examination.

By Col. Windom:

Q. Your name is Robert Mellman and you are an attorney at law, is that correct, in Columbus?

A. That's correct.

Q. I believe I asked you yesterday the question as to whether you represented the defendant David Friedberg in the settlement of his HOLC deficiency judgment?

A. I did.

Mr. Sillman: If the Court please, if the question is put in that form we will have to object at this time. He may ask if he represented Mr. Friedberg and his relationship. [fol. 141] The Court: The objection will have to be sustained. Ask him what he did.

Col. Windom: It has already been stipulated that the deficiency was settled, in the introduction of the Common Pleas Court records.

Mr. Sillman: I am not talking about that.

The Court: Your objection has been sustained. Let us get along with the trial. The objection was sustained due to the fact that you are assuming something in your question.

Col. Windom: I would like to have the question again.

(Question read.) (Answer read.)

The Court: I think your objection will have to be overruled. He answered that he did represent him.

Col. Windom: I might point out it was stipulated by counsel in connection with the Common Pleas Court case.

The Court: To make the record clear, did you represent him?

The Witness: I did.

Q. And, Mr. Mellman, was this settlement for the sum of \$100?

Mr. Sillman: Object.

The Court: Sustained.

Q. What was it, Mr. Mellman, if you know?

Mr. Sillman: Object.

The Court: If he knows he may answer.

Col. Windom: You have already stipulated it. If I may [fols. 142-149] stand on that point, I would like to go back that they have stipulated it.

The Court: If it is in the record it is repetitious. If it is in the record why repeat it.

Col. Windom: We seem to be in disagreement.

Mr. Sillman: There is no disagreement. We have stipulated the Common Pleas Court record.

Col. Windom: The settlement was for the sum of \$100.

Mr. Sillman: Whatever the record shows, and you say it shows \$100 and it was \$100. There is no argument about that. It is repetitious.

[fol. 150] MEYER COHEN, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Col. Windom:

Q. State your name, please?

[fol. 151] A. Meyer Cohen.

Q. Now, Mr. Cohen, when you answer my questions please talk toward the jury and rather loudly.

What is your address, Mr. Cohen?

A. 759 Seymour Avenue.

Q. What is your business?

A. My business is 23 East Rich.

Q. What do you do there?

A. Tailoring.

Q. Are you acquainted with the defendant, David Friedberg?

A. I should have been. Nineteen years in business with him.

Q. When did you first become acquainted with David Friedberg?

A. In Dayton, Ohio. I believe it was about 1917.

Q. Have you known him continuously since that date?

A. Yes, sir.

Q. You have already stated this but I will ask the question. Were you ever in business with Mr. Friedberg?

A. I was in Dayton. Then we moved here to Columbus.

Q. And, how long were you in business with him, Mr. Cohen?

A. We must have been in business about nineteen years.

Q. Do you recall when you started in business with him, sir?

A. As I said, about 1917 or '18. I cannot recall just exactly.

Q. I will ask you whether or not yourself and the defendant formed the Buckeye Tailoring Company?

A. Yes, sir.

[fol. 152] Q. Approximately what date did you form that company, sir?

A. I couldn't say.

Q. To refresh your recollection, I will ask you whether it was about 1923?

A. Oh, it was sooner than 1923.

Q. And——

A. In 1921 we moved to Columbus.

Q. Counsel are in agreement that the actual incorporation was in January 1922. Is that——

A. But we were in partnership before we were incorporated.

Q. I am speaking about the incorporation.

A. Incorporation must have been in 1922.

Q. How long did you remain in business in Dayton?

A. In Dayton we weren't very long. About two years; a little over.

Q. Then what happened?

A. Then we moved to Columbus.

Q. What location, please?

A. It was on East Long Street.

Q. About where on East Long?

A. 44, I believe it was.

Q. Where did you move from there; that is, the business I am speaking of?

A. From 44 we moved on East Main Street over the Lutheran Book Concern on 5th floor.

Q. Where from there?

[fol. 153] A. We moved back to Long Street but farther down.

Q. And then where?

A. And that was the end of it.

Q. What occurred that you terminated the business with Mr. Friedberg?

Mr. Sillman: Object to that.

A. What do you mean occurred?

Q. I mean what happened, did you terminate it?

The Court: Sustained. What is the difference?

A. Well, we didn't have no more money to go on with it.

The Court: Just a moment. The Court sustained the objection.

How is that material to this case?

Col. Windom: It will be very material in a minute, on the question of Mr. Friedberg's financial status at that time.

The Court: Let us get to the financial status.

Mr. Sillman: You are talking about a corporation, too, not Mr. Friedberg.

Q. Was the business terminated, sir?

A. Yes.

Q. Approximately when?

A. It was in 1941, I believe.

Q. And, how was it terminated?

A. On account of financial resources. He claimed he didn't have any money; I didn't have no money.

[fol. 154] Mr. Sillman: Object to the volunteered testimony.

The Court: Sustained. The objection is sustained to that part of his answer.

Q. Did Mr. Friedberg, to your knowledge, engage in any other business other than tailoring while you were associated with him?

A. No, sir, I don't.

Q. Were you also acquainted with Mr. Friedberg's wife, Frances?

A. Yes, sir. They lived in my house in Dayton.

Q. They leased your house in Dayton?

A. Yes, sir, they had a room in my house.

Q. How long have you known Mrs. Friedberg?

A. As soon as I know Mr. Friedberg. The same time. Because they moved in from New York and they didn't have no room.

Mr. Sillman: Object. This witness volunteers and it is not responsive to the question.

The Court: Just answer the question.

The Witness: That's what I do, Your Honor.

Q. Now, at the time the business was dissolved did you have any conversations with Mr. Friedberg at that time about the dissolution?

A. No, we didn't.

Q. How did you come to dissolve the business?

A. The idea we come to dissolve the business because we couldn't pay our bills, and naturally we had to dissolve it some way, and we went—Mr. Schanfarber was our attorney at that time. He was leaving. And we talked to Mr. Schanfarber and Mr. Schanfarber said he would wipe [fol. 155] his hands. He don't want that case.

Mr. Sillman: Object to this volunteered information. It is not responsive at all.

The Court: Yes. What Mr. Schanfarber said will be ordered stricken.

Mr. Sillman: We stipulate the corporation was dissolved.

Col. Windom: Not the whole answer. The latter part of it?

The Court: As to what Mr. Schanfarber said is ordered stricken. The jury will disregard it.

Q. I will ask you whether or not you had any funds at the time of dissolution?

A. I did.

Mr. Sillman: Object.

The Court: Sustained. We are not interested in finding out about this man's funds.

Q. Did you have any conversations about the time of dissolution of the business with Mr. Friedberg as to whether he had any funds?

Mr. Sillman: Object to that if it is in connection with this business, the corporation.

A. I didn't—

The Court: He may answer yes or not, whether he had any conversation.

Do you understand the question?

A. Yes, I did, and he claimed he didn't have no funds.

Q. What were your conversations with him at that time, [fol. 156] relating solely to the question of whether he had any funds at that time?

A. Because he wanted to buy the business, and I says, "If a man hasn't got no funds how can he buy the business?" But, one way or other he went to Mr. Sillman—

Mr. Sillman: Object.

The Court: Just answer the question, Mr. Cohen.

The Witness: OK, sir.

Q. Who else was involved in the corporation besides yourself and Mr. Friedberg?

A. Mr. Weiss, Nathan Weiss.

Q. And, what was Mr. Weiss' capacity?

A. Cutting. He took care of the cutting department.

Q. Did all three of you actually work in the business?

A. We did.

Q. At the time you were considering dissolution of the tailoring corporation I will ask you whether or not the corporation or any of you three gentlemen engaged in it tried to raise money to continue the operation?

Mr. Sillman: Object.

A. No, I didn't.

The Court: Overruled.

Q. Do you know whether Mr. Friedberg did or not?

A. This I can't tell.

Col. Windom: Cross examine.

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[fols. 157-159]

Cross examination.

By Mr. Sillman:

[fols. 160-162] Q. The corporation was dissolved on February 1, 1941, is that correct?

A. Yes, sir.

Q. Now, that dissolution was a voluntary dissolution, wasn't it?

A. No, sir.

Q. You mean that you didn't sign a consent to the dissolution?

A. Well, I signed. The reason I signed because I didn't have the finances to go and stay in business with. And, neither did Mr. Friedberg. Where he got his finances afterwards I don't know. The dissolution what I had, I couldn't stay in business without any finances.

.

[fol. 163] Mr. Sillman: I object to this volunteered type of information. I am asking him a question whether he knows Mr. Friedberg was in business in Columbus. I think he can answer that. He says now on the stand that he didn't know it until just now.

The Court: He has answered, then.

Mr. Sillman: I am asking him if that is what he means to [fol. 164] say.

The Witness: I knew the American Mills. I didn't even know he went by the Buckeye Tailoring Company. I thought the Buckeye Tailoring Company is dissolved.

Q. Who was the American Mills?

A. The company that was incorporated, which is Friedberg and myself.

Q. American Mills?

A. No, Buckeye. You didn't ask me the American Mills. I beg your pardon.

Q. I just asked you who was American Mills?

A. I don't know.

Q. What did you mention the name for?

A. What do you mean I mentioned? Because I have seen the sign on Third Street, American Mills Tailors.

Q. Did it ever occur to you who was in that business?

A. Why should I be interested in it? It is not in my line of business no more. I am in a different line of business. I am not interested in his business.

Q. What attracted your attention to the sign American Mills?

A. What do you mean? Suppose I go down the street and see FBI or Lazarus or somebody else. Haven't I got a right to read?

Q. Why did you only mention the American Mills?

A. That's what you asked me.

Q. No, I didn't ask you.

[fol. 165] A. You certainly did. Your Honor, he certainly did ask me and I answered him that.

Q. Now, Mr. Cohen, I know it may be a little bit difficult, but I do want to develop from you whether you did or did not know whether Mr. Friedberg was in business after the dissolution, that he continued the business.

The Witness: Your Honor, is there anything I must answer? Must I personally have in mind this business?

The Court: If you know whether or not he was in business answer it yes or not.

A. Naturally, American Mills. And when I talk to people they tell me Friedberg, but I myself didn't inquire whether it is Friedberg, Jones or somebody else.

The Court: Did you know whether or not Mr. Friedberg was in business?

The Witness: Yes, I did afterward, a few years from now.

The Court: He has answered.

Q. Now, you say that you and Mr. Friedberg weren't mad at each other in the intervening years from 1941, when the Buckeye Tailoring Company was dissolved, up to the present time. Have you ever talked to Mr. Friedberg?

A. No, sir.

Q. Have you seen him?

A. No, sir.

Q. You mean you have never seen him?

[fol. 166] A. I saw him once on the street, that's all.

Q. Did you ever call him?

A. What for?

Q. I asked you if you ever called him?

A. Why should I call him?

Q. I didn't ask you if you should call him.

A. Did I ever call you, Mr. Sillman?

Q. I asked you if you ever called Mr. Friedberg.

A. Well, for a fact, I did call him, and I will tell you in which way I called him if you will allow me.

Q. Are you going to relate some conversation you had?

A. No, I am not relating no conversation with Mr. Friedberg, and nothing at all.

Q. Did you know Mrs. Friedberg?

A. I certainly do.

Q. Did you ever speak to her since 1941?

A. No, sir.

Q. Have you ever seen her since 1941?

A. On the street, yes.

Q. And you never speak to her?

A. No, sir.

Q. Why do you pass her by if you know her? You have known her since 1917.

A. Now, listen, you pass me by many times you saw me on the street and you didn't speak to me. Can I make you speak to me?

[fols. 167-168] Q. I am not mad at you. I am just trying to develop from you that you and Mr. Friedberg are mad at each other.

A. Whether he is mad at me I don't know. I am not mad. What can I be mad at him about? I am out of, without money. I am making a living. And I forget all those things that happened.

Q. And, you and Mr. Friedberg are friends?

A. What do I know what Mr. Friedberg is to me.

Q. Why do you want to hide this from the jury?

A. Why do you ask about Mr. Friedberg being a friend of mine. Why don't you ask Mr. Friedberg whether he is a friend of mine.

Q. I am going to. I am asking you right now. Are you and Mr. Friedberg friends?

A. I have nothing against him. Is that fair enough?

Q. Can you answer the question, are you friends?

The Witness: Your Honor, must I answer?

The Court: You may answer whether you are or are not.

You may answer that yes or no. You may explain your answer.

A. I didn't try no harm to Mr. Friedberg since I am away from him and I didn't try to do any good, so naturally I am neutral.

Q. Mr. Cohen, do you have any idea of how much money it would take to start up a tailoring business, one that makes tailored to trade, cut make trim, and general business in which there are woolens and matters of that kind, inventory? How much capital does it take?

A. I can tell you approximately, but from what I hear that Mr. Friedberg is carrying a big stock it takes a lot of money to do it.

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[fol. 169] Redirect examination.

By Col. Windom:

Q. Mr. Cohen, I believe you said that normally each of you were supposed to draw \$50 a week?

A. That's right.

Q. But that—

A. At the start we drew \$40, then we raised up to \$50, and that was our average of \$50 a week.

Q. Then you said at sometimes you drew more than that?

A. That's right. Not for long.

Q. For how long?

A. Just about a few weeks at a time.

Q. And, how many weeks would that be over a year, would you say, that you drew more than \$50?

[fols. 170-171] A. Oh, it wasn't quite even six months.

Q. Let me ask you this. Did you also share the expenses equally?

A. Supposed to.

Col. Windom: That's all.

The Court: You are excused. Call your next witness.

Col. Windom: Mark this as an exhibit.

(Government's Exhibit 9 was marked for identification.)

OFFERS IN EVIDENCE

Col. Windom: The government offers in evidence Government's Exhibit 9.

Mr. Sillman: It may be admitted without objection.

(Government's Exhibit 9 was admitted without objection.)

Col. Windom: Is it stipulated, Mr. Sillman, that this represents the only payments which Mr. Friedberg received in settlement of the estate of Rose Friedberg?

Mr. Sillman: That is correct, and you may state the amount.

Col. Windom: The amount of this check is \$1030.

[fol. 172] Col. Windom: If the Court please, we have heretofore introduced in evidence certain of the No. 2 exhibits. So that it may not be confusing, I am offering in evidence at this time the remainder of the exhibits, being the net worth statement, Govt's Exhibit 2; Exhibit 2 (a), which are the ledger sheets of the Ohio National Bank covering the Buckeye Tailoring Company accounts; 2 (b), which is the ledger card and the account at the Park Federal Savings and Loan Association for Frances F. Friedberg; 2 (c), which is the account at the First Federal Savings and Loan for D. F. and F. F. Handler; 2 (d), which is the card and records from the First Federal Savings and Loan Association in the name of A. Wayne Friedberg; 2 (e), which is the records of the First Federal Savings and Loan Association in the name A. Wayne or Frances Friedberg; 2 (f), which is the records of the First Federal Savings and Loan Association in the name Elaine or Frances Friedberg; 2 (g), which is Buckeye State Building and Loan card and record in the name Frances F. or David Friedberg; 2 (h), which is Buckeye State Building and Loan card and records in the name Frances F. or David Friedberg; 2 (i), which is the Franklin Federal Savings and Loan Association card and records in the name of Frances or David Friedberg; 2 (j), which is Dollar Federal Savings and Loan Association card and records in the name of Frances F. or David Friedberg; 2 (k), which is Dollar Federal Savings and Loan Association ledger sheet and card in the name of David or Frances Friedberg;

[fol. 173] 2 (L), which is the Dollar Federal Savings and Loan Association ledger sheet and card in the name of Elaine F. or Frances Friedberg; 2 (M), Dollar Federal Savings and Loan Association ledger sheet and card in the name of A. Wayne or Frances Friedberg; 2 (N), being the stock records of Vergoe & Company, Huntington Bank Building, Columbus, Ohio, in the name A. Wayne Friedberg; 2 (o), I think, is already in; 2 (p), which is the card record of the Metropolitan Life Insurance Company in the name of David Friedberg; 2 (q), which is the record of the Penn Mutual State Life Insurance Company in the name of Elaine Friedberg, apparently the middle name is Farrand; 2 (r), the record of the New England Mutual Life Insurance Company in the name of Armand W. Friedberg—I take it that is the name of Wayne Friedberg; 2 (s), the records of rental payments of Edith Cockins; 2 (t), the records of A. D. Curfman of Westerville, Ohio, representing rental payments; 2 (u), records of the Market Exchange Bank, application papers and receipts signed F. F. Handler and David Handler.

The Government offers all of those in evidence, which completes Government's Exhibit 2.

The Court: Is there objection?

Mr. Sillman: No objection.

The Court: They will be admitted in evidence.

[fol. 174] MARY CONNELL APPL, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Col. Windom:

Q. Will you state your name, please?

A. My name is Mary Connell Appl.

Q. Where do you live, Mrs. Appl?

A. I live at 809 Burgess.

Q. What is your present occupation?

A. I am a housewife.

Q. I will ask you whether or not you were ever employed by the Buckeye Tailoring Company at Columbus, Ohio?

A. Yes, I was.

Q. When was that?

A. From December '38 through November 30, 1944.

Q. What was your position with the Buckeye Tailoring Company, please?

A. I was employed as bookkeeper.

Q. May I inquire what bookkeeping training that you had prior to that time?

A. Training?

[fol. 175] Q. Yes.

A. I had two years.

Q. Two years of what, experience or schooling?

A. No, that was schooling. I had five years bookkeeping experience.

Q. Who was your immediate superior when you were working for Buckeye Tailoring Company?

A. Mr. Friedberg.

Q. Is that the David Friedberg seated here?

A. Yes.

Q. Did he supervise your bookkeeping work while you were with Buckeye Tailoring?

A. Yes.

Q. What records did you as bookkeeper maintain for the Buckeye Tailoring Company while you were employed there?

A. The cash receipts and disbursements, accounts receivable and payable, monthly journal and the payroll and sales record.

Q. Will you sort of yell that toward the jury. I know what you are saying but I am not sure they do.

A. The cash receipts, disbursements, accounts receivable and payable, monthly journal and the payroll.

Q. Were you employed at the Buckeye Tailoring while Mr. Cohen and Mr. Weiss were still with the organization?

A. Yes, I was.

Q. Now, after Mr. Friedberg—pardon me. Did Mr. [fol. 176] Friedberg later come to own the company while you were employed there?

A. Yes, he did.

Q. After Mr. Friedberg purchased the Buckeye Tailoring Company, what records did you maintain?

A. The same as before.

Q. Was the bookkeeping carried on in the same manner as before?

A. No, it wasn't carried on because there were other duties that I had to take care of besides the bookkeeping.

Q. Were you the only person who handled the books there?

A. Yes, I was. Mrs. Friedberg assisted me in the bookkeeping.

Q. Just what did Mrs. Friedberg do?

A. Well, in any way that she could assist in the work to get it out.

Q. In relation to the books and records, or to your other duties?

A. No, the bookkeeping.

Q. What were her duties; what did she do in that regard?

A. She made postings of the purchase invoices to the monthly journal and made entries from the cash journal to the accounts receivable journal.

Q. If I understand correctly, the operation was actually carried on under several names, is that correct?

A. Yes.

Q. What were those names, please?

A. Buckeye Tailoring and American Mill Tailors.

Q. And what?

A. American Mill Tailors.

[fol 177] Q. Who kept the records of the American Mills?

A. I did.

Q. Let me ask you, who recorded the sales and cash entries of the American Mill Tailoring?

A. I did.

Q. You made all of the entries in the sales and cash entries of the American Mills yourself?

A. No, I didn't make them all myself.

Q. If you didn't, who did?

A. Mrs. Friedberg entered entries from the cash journal to the accounts receivable ledger.

Q. Who actually had charge of the American Mill records; you or Mrs. Friedberg?

A. Well, I would say I did.

Q. Is that a change in opinion?

A. I don't mean I had charge of them. I was really the bookkeeper but she assisted in any way that was possible.

Q. What causes the change in your answer since the last time you were interviewed?

A. I don't know what you mean.

Q. What I am trying to find out—

A. Of late she posted all the entries to the accounts receivable.

Q. Which accounts are we referring to?

A. The American Mill Tailors.

Q. Now, what do you mean; just explain that.

[fol. 178] A. The charges and credits.

Q. What period of time is that?

A. I wouldn't know how long that had been.

Q. I mean approximately what time during your employment there?

A. Say, in the last year.

Q. By cash entries, Mrs. Appl, do you mean that Mrs. Friedberg made the entries to the retail accounts receivable ledger?

A. Yes, I do.

Q. Now, this American Mills, was that the retail or the wholesale business?

A. That represented the retail.

Q. And the Buckeye Tailoring, then, represented the wholesale portion of the business?

A. Yes, sir.

Q. What was the Jacobson Tailoring Company?

A. That was the name used in the manufacturing of garments.

Q. Also by Mr. Friedberg?

A. Yes.

Q. Mrs. Appl, let me ask you. You stated that after Mr. Friedberg took over the business you had other duties other than bookkeeping?

A. Yes.

Q. Will you please tell me, again, what they were and what portion of your time did they consume?

A. Well, the stenographic work, answering the telephone,

[fol. 179] work in the store, sales work, filing, and just general work that had to be done.

Q. Would you say that the records of Mr. Friedberg's operations in the tailoring business were maintained with the same care after he took over the business as before?

A. No, because I couldn't devote the time to them.

Q. Did Mr. Friedberg appear to be concerned about that?

A. No.

Mr. Sillman: I object to that, if the Court please.

The Court: Sustained.

Q. While you were working for the Buckeye Tailoring Company, who was in charge of daily cash receipts?

A. I was while I was in the office. I accepted all of them.

Q. Did you prepare the bank deposit slips at that time?

A. Yes.

Q. What was the source of the cash receipts which you deposited in the bank, if you know, Mrs. Appl?

A. That would represent the deposits and the balance paid on garments delivered, and the amounts received from the wholesale part, from the wholesale customers.

Q. Would you repeat the answer.

A. It represented the deposits and balance received for garments made and the amounts that come in from the wholesale.

Q. What do you mean by deposits, Mrs. Appl?

A. Deposits that were paid on garments when they were ordered.

Q. To be made?

[fol. 180] A. To be made.

Q. You are including, are you, both wholesale and retail business in that?

A. Yes.

Q. And, were alterations and repairs included in that?

A. They were, too, yes.

Q. Now, at the time you were on these other jobs that you have enumerated, or other assignments you have enumerated, who took care of the daily cash receipts at that time?

A. I took care of the receipts myself all the time I was in the office. I made the deposits and recorded the entries in the cash book.

Q. What I mean, Mrs. Appl, were you at the tailoring firm continuously or did you, for example, go to lunch?

A. Oh, yes.

Q. Who took care of them during your absence?

A. Either Mr. or Mrs. Friedberg.

Q. Did you ever prepare any financial statements for the Buckeye Tailoring Company?

A. No, I didn't.

Q. Did you ever have any conversations with Mr. Friedberg about the financial condition of the company?

A. No.

Q. And by company I mean, loosely, all of the several businesses; in other words, the entire operation.

A. No.

[fols. 181-183] Q. Did you ever prepare any income tax returns for Mr. Friedberg?

A. No, I didn't.

Q. Did you ever prepare the figures to be used in the preparation of his income tax returns?

A. No.

Q. I will ask you, to your knowledge, were the books of the tailoring company ever audited while you were in the employ of the company?

A. Not after Mr. Friedberg became the sole owner, no, not to my knowledge.

Q. Any audit, then, was before he acquired complete ownership?

A. That's right.

Col. Windom: Cross examine.

Cross examination.

By Mr. Sillman:

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[fol. 184] Q. So that when you testified that you were employed by Buckeye Tailoring from December 1938 to November 1944, you meant you were employed by the old corporation up to the time it was dissolved, is that correct?

A. That's what I meant.

Q. And that you were employed by Mr. Friedberg doing business as Buckeye Tailoring after it was dissolved, after the corporation was dissolved?

A. That's what I meant.

Q. Now, we are only concerned, in my question, Mr. Appl, with Mr. Friedberg as an individual. That is, he started in business in 1941, and whenever I make a reference from now on to Buckeye Tailoring Company I will mean Mr. Friedberg's business. You will understand that. And, if I have occasion to refer to the old corporation I will call it corporation so you will know.

A. All right.

[fol. 185] Q. Did the wholesale business—the corporation, not Mr. Friedberg—finish garments or sew garments up on the premises?

A. Yes, they did.

Q. And, when you say wholesale, they sewed those up for other tailors?

A. Yes.

Q. Now, in order that we may have a clear understanding and a distinction between these two businesses, the old corporation would receive orders from dealers; that is, dealers who in turn would sell the customers?

A. Yes.

Q. They would send in the measurements for a suit, wouldn't they?

A. Yes.

Q. And, they would indicate the kind of cloth by a sample number?

A. That is right.

[fol. 186] Q. And, when the old Buckeye Corporation got the order with the customer's individual measurements, the old Buckeye Corporation would cut the cloth right on the premises there on Long Street, is that correct?

A. That's correct.

Q. Lay out the pattern, cut the cloth, and then they would actually sew up or finish the garment right on the premises?

A. That is right.

Q. And for that finishing operation, and its entire operation, you say they had about 25 to 30 employees?

A. 25 to 30.

Q. And, of course, you were the bookkeeper. Did you assist in making payrolls?

A. I made the payrolls.

Q. Well, you made the payrolls so I guess you ought to know how many employees they had.

Now, with that background and by way of contrast, I want to ask you what kind of business Mr. Friedberg engaged in. It was the same name, Buckeye Tailoring, but I want to get the distinction. Did Mr. Friedberg, when he undertook the business for himself and moved over to the 180 Third Street address, sew up or finish the garments on his premises, or did he send them out to independent finishing shops?

A. They were sent to finishing shops.

Q. So that just the reverse took place. Here on North Third Street Mr. Friedberg was taking orders and sending them to some other finishing shop to be finished up, just like the old Buckeye used to finish them up for dealers like [fol. 187] Mr. Friedberg?

A. Yes.

Q. So that we have, in a sense, Mr. Friedberg, the old Buckeye Corporation, being substantially what we call a finishing shop?

A. Yes.

Q. Now, when Mr. Friedberg operated at this 180 Third Street address, Buckeye Tailoring Company and American Mills, did he have any of the garments made on the premises, or were they always sent to these outside finishing shops?

A. They were sent outside.

Q. And, when you say sent outside, do you mean they were sent to independent companies that had no connection with Mr. Friedberg, is that correct?

A. That's correct.

Q. And, these independent companies would take the cloth—it was already cut out—and sew it up or finish it for a flat labor price?

A. That is correct.

Q. Now, so that we will understand what we are talking

about, a finishing shop, as you refer to it, is one which takes the cloth, which is already cut out by somebody else, and they sew it together, sew it up, lining and all, and produce what we call the finished garment?

A. Yes.

Q. Those independent finishing shops were all outside shops having no connection with Mr. Friedberg?

A. That is right.

[fol. 188] Q. And, that kind of work, finishing work, is what the old corporation used to do?

A. Yes.

Q. Were there any other bookkeepers for the old corporation, which employed some 25 or 30 employees? Did you do any other kind of work except bookkeeping or did that take about all of your time?

A. That took about all of my time.

Q. Now, when Mr. Friedberg opened a business for himself at 180 South Third Street, how many employees did he employ in that business, in which they didn't finish any garments on the premises?

A. I would say about two cutters and one tailor.

Q. So, you had about three employees in Mr. Friedberg's personal business?

A. Yes.

Q. As compared with some 25 or 30 employees in the old corporation?

A. Yes.

Q. And, in view of that limited number of employees, Mrs. Appl, weren't you required to do considerable additional duties when you worked for Mr. Friedberg than you were required when you worked solely as bookkeeper for the old corporation?

A. Yes, I was.

Q. You did some things such as write letters?

A. Yes.

Q. And, you sometimes waited on customers?

[fol. 189] A. Yes.

Q. And, you accepted cash and checks and payments from customers?

A. Yes.

Q. And, you made yourself generally useful around the business as a clerk?

A. Yes.

Q. And stenographer?

A. Anything i could do.

Q. Whatever you could do in addition to doing the book-keeping work, is that right?

A. That's right.

Q. Whereas in the old corporation you had nothing to do but the bookkeeping work?

A. That was all I did.

Q. There wasn't enough bookkeeping work in this new little venture to justify you spending all your time?

A. Oh, no.

Q. You wouldn't have been able to put in a whole day at just keeping books in this new little business, is that right?

A. No.

Q. You referred to such names as American Mill Tailors and Jacobson. The American Mill Tailors, did that relate to the retail business that Mr. Friedberg did?

A. Yes, it did.

[fol. 190] Q. And, did the Buckeye Tailoring Company relate to the wholesale business?

A. Yes.

Q. And, did Jacobson Tailoring relate to his sewing, his connection with the finishing shops?

A. Yes, it did.

Q. Now, I think it is very important that we define those terms to the jury because they might be confusing. The business end under the name of American Mill Tailoring, or American Mill Tailors, was that exclusively retail sales that were sold to a specific customer whose measurement was taken?

A. Yes.

Col. Windom: You are limiting it to the time she was employed?

Mr. Sillman: Oh, yes, she couldn't testify to any other time than when she was employed.

Q. Your testimony is limited to the time you were there, or you wouldn't know?

A. I wouldn't know.

Q. Now, when customers came in; that is, an individual customer, and if a suit was ordered, just one single suit, that was entered on the order book, wasn't it?

A. Yes.

Q. And, then, the customer's measurements were taken by Mr. Friedberg or somebody around there, one of the [fol. 191] two or three employees?

A. Yes.

Q. In other words, they took his measurements, and then the cloth was cut out in the shop there?

A. Yes.

Q. The pattern was laid out and with the scissors clipped it around and cut it out, and then that cloth was sent outside to these independent finishing shops, wasn't it?

A. Yes.

Q. And, when the finishing shops completed the garment, which you said was at a flat price—the labor only they furnished?

A. Yes.

Q. When a finishing shop finished the garment, they sent it back to your place?

A. That's right.

Q. And, the customer would come in and get his garment, try it on, of course, and make the alterations necessary?

A. That's right.

Q. Now, those are what you refer to and what we will refer to as retail sales?

A. Yes.

Q. Now, those sales were conducted under the trade name American Mill Tailors?

A. That is right.

Q. There was another class of business, another source of income which you referred to as wholesale business. [fol. 192] The wholesale business was conducted under the name of Buckeye Tailoring?

A. That's right.

Q. And, did it consist of the following, Mrs. Appl: that a dealer would take the measurements of his own customer, maybe not in Columbus or wherever he may be, and the dealer would send the measurements and order into Mr. Friedberg?

A. That is the way it was handled.

Q. Would the seller sometimes furnish his own cloth?

A. Sometimes.

Q. Would he sometimes order from a sample number?

A. Yes.

Q. In which case Mr. Friedberg furnished the cloth?

A. That's right.

Q. Now, whether Mr. Friedberg furnished the cloth or whether the customer furnished his own, it still was considered wholesale business if he was making a suit for somebody else?

A. Yes, it would be.

Q. In those cases, did the same process take place, did Mr. Friedberg cut those garments on the premises?

A. Yes.

Q. And, did he send all of these garments out to the finishing shops?

A. They were all sent out.

Q. So that whether the business was retail, as you defined it, to the individual customer, or whether it was wholesale [fol. 193] where some dealer would order from Mr. Friedberg, all Mr. Friedberg furnished was the labor for cutting, and in some instances furnished the woolens, and the sewing shops finished the garments?

A. That's right.

Q. He would pay the sewing shops himself, of course?

A. Yes.

Q. In Mr. Friedberg's dealings with the sewing shops; that is, where he would send them the cloth all cut out for them to sew up and finish, it is that end of the business that you refer to as Jacobson Tailoring?

A. That is right.

Q. Now, the important thing, Mrs. Appl, is this. Were all income, all receipts of every kind and description, received in this business, entered under one name or carried under one set of books, Buckeye Tailoring Company books?

A. They were entered under one name, Buckeye Tailoring.

Q. Now, this question. It is tremendously important to us, Mrs. Appl. Mr. Friedberg did not keep a set of books

for American Mill Tailoring, the retail end of the business?
[fol. 194] A. No.

Q. He didn't keep a separate set of books, I mean, for the sewing shop end of the business?

A. No.

Q. It was all part of one process, wasn't it?

A. It certainly was.

Q. You kept while you were there one set of books, the Buckeye Tailoring Company, is that correct?

A. That's correct.

Q. And, I want you to tell the jury whether all of the income from that business, whether it came from the American Mill Tailoring Company, the retail business, was all entered in this one set of books?

A. That was all entered in the one set of books.

Q. Was all of the income of every kind and description from the wholesale business, Buckeye Tailoring Company, entered in this one set of books?

A. Yes.

Q. And, was all of the income—there was no other income from the Jacobson, that was paid out?

A. That was paid out.

Q. Were all of the pay-outs to wholesale tailors all entered in the same Buckeye Tailoring set of books?

A. Yes.

Q. There is no question, is there, Mrs. Appl—and you can think about this very carefully because it is important—[fol. 195] but that Mr. Friedberg, while he used the name of American Mill Tailors for his retail phase of his business, used the name of Jacobson Tailors in connection with the finishing shops, and Buckeye Tailoring in connection with his relations with dealers, that all of the income and all of the receipts were entered into one set of books?

A. It was.

Q. And you called them and he called them the Buckeye Tailoring Company books?

A. That's the way it was.

Q. Actually, Mrs. Appl, this business as conducted by Mr. Friedberg as an individual actually was the Buckeye Tailoring Company business?

A. Yes, it was.

Q. And, this use of American Mills in connection with retail business was purely an identifying process, wasn't it?

A. That's all it was.

Q. It merely identified retail business, called American Mill Tailors, and business for other dealers, wholesalers you have referred to it, called Buckeye Tailors?

A. Yes.

Q. But, actually, there was only one business, Buckeye Tailoring Company?

A. That's right.

Q. And only one set of books, and all income was entered into those books?

[fol. 196] A. In the Buckeye Tailors.

Q. From every source?

A. That's right.

Q. Now, you have referred to the various sources of income. There was some income from the sale of these retail suits, American Mill Tailor suits?

A. Yes.

Q. Is that right, Mrs. Appl?

A. That's right.

Q. There was some income from the wholesale transactions, Buckeye Tailoring wholesale transactions?

A. Yes.

Q. In the case of these suits, you had order books, customer order books, and entries made in there?

A. That is right.

Q. When a customer came in his name was entered in that book, wasn't it?

A. Yes.

Q. And, did you, when the customer paid anything, make an entry in the cash receipts journal?

A. Yes.

Q. Was all income received from customers on retail sales entered into the cash receipts journal?

A. Yes, it was.

Q. Now, as to the Buckeye Tailoring wholesale business, [fol. 197] were invoices made of these transactions with the wholesale customers?

A. Yes.

Q. Was all income from the wholesale business also entered into the cash receipts journal?

A. In the same cash receipts journal.

Q. In the same cash receipts journal?

A. Yes.

Q. And, you made the entries, didn't you?

A. Yes, I did.

Q. Now, there was an additional source of income, Mrs. Appl, and that was from cleaning and pressing?

A. Yes.

Q. And alterations?

A. Yes.

Q. Miscellaneous income?

A. Yes.

Q. Was that substantial in comparison with this business, or was that just a negligible amount?

A. I would say it was a small amount.

Q. How would you enter that income in the records of Mr. Friedberg?

A. That was entered in the cash receipts book as cleaning and alterations.

Q. It was lumped together?

A. Lumped together.

[fol. 198] Q. In the miscellaneous cleaning and alterations?

A. Yes.

Q. So that, there were only three sources of income?

A. That's right, I think that's all.

Q. That's what I want to know. What we call retail, what you call wholesale and what you now describe as a negligible amount of cleaning, pressing and alterations?

A. Yes.

Q. And, was all of the latter also entered in the cash receipts journal?

A. Yes.

Q. Now, Mrs. Appl, the work sheets that Mr. Friedberg took up for the purpose of having his income tax returns prepared, where did he get the figures for those work sheets?

A. Well, I don't know where he got them. He would have had to get them from the books.

Q. Would there have been any place else but the books

A. No.

Q. I am talking—would there have been any place else except the books that you kept?

A. No.

Q. I would like you to give the jury, if you please, Mr Appl, some little idea of just how you would perform your duties, and I will approach that subject in this fashion: What happened to money that came in from the business? Retail customers would come in and make a deposit or pay [fol. 199] a balance on a bill, cash or by check.

A. They would be given a receipt.

Q. Somebody would come in with a small amount, maybe for a miscellaneous cleaning and pressing.

A. Yes.

Q. That money came in?

A. Yes.

Q. And, checks would come in from some of the dealer or wholesale customers?

A. Yes.

Q. Is that right?

A. That's right.

Q. What other money would come into this business, or is that all?

A. Well, there were some personal checks that were written that I would receive money to reimburse.

Q. Are those the accommodation items?

A. Yes.

Q. Well, now, I am going to have you explain those in detail. I am talking about income.

A. That would be all, just what we mentioned.

Q. We will explain the accommodation items, but I mean when you said you were correct in answering that question I mean were there any other sources of income?

A. No.

Q. How was this money handled; what did you do; what [fol. 200] was done around there; what did you see? Tell the jury what took place.

A. For the retail sales a receipt was given to the customer, and about noon every day a deposit was made at the bank for every bit of cash that came in the office.

Q. Now, when you say a deposit was made at noon, who made the deposits?

A. I did.

Q. That's what I want you to tell the jury. I want them to know. I do know, but I want them to know who handled this money and who made up the deposit slip, and just run through that.

A. I made the entries in the cash journal, made up the deposit slips and took them to the bank.

Q. So, you made the entries in your handwriting in the cash journal?

A. Yes.

Q. And, you made up the deposit slips by which the money, the income, was put into the bank?

A. That's right.

Q. And, you made the deposit by carrying the deposits to the bank?

A. To the bank.

Q. Is that correct?

A. That's correct.

Q. Now, some reference has been made to you going out to lunch. Well, of course you did go out to lunch, didn't you?

A. Every day.

[fol. 201] Q. I would think so. And if during the time that you were out to lunch, if something came in, where would that money be when you came back from lunch?

A. It would be in the cash drawer.

Q. When did you make up your deposit slips; the same day or the next day?

A. I made it up about the same time every day before I went out to lunch.

Q. Now, I want to get to this item that you just started to mention: accommodation checks. What were those, Mrs. Appl?

A. Well, they were personal amounts that the checks were made out for. Maybe the rent for Mr. Friedberg's residence where he lived. And at the time the check was made out I was given the cash to deposit in the bank to take care of the amount that was written up on the check.

Q. Now, let's see if I understand that. Did Mr. Friedberg have a personal checking account?

A. No, he didn't. That was the reason for me issuing these checks.

Q. The only checking account that he had was the Buckeye Tailoring checking account?

A. That's right.

Q. Of course, there was no American Mills checking account?

A. No.

Q. Those are just the trade names. No Jacobson checking account?

A. No.

Q. He had no personal checking account?

[fol. 202] A. No.

Q. So, there was only one checking account?

A. To draw from.

Q. Only one?

A. Yes.

Q. And, that was in the name of Buckeye Tailoring Company?

A. That's right.

Q. And, what bank was it in?

A. The Ohio National Bank.

Q. Now, are you able to tell this jury that there were no other checking accounts, personal or in any other name, American Mill or otherwise? That's the only one?

A. That's the only one.

Q. Now, there were occasions, you said, when—you said it happened regularly—these accommodations happened regularly, didn't they?

A. Yes.

Q. Mr. Friedberg would want to pay his personal rent, his house rent?

A. Yes.

Q. What amount would that be? Do you have a recollection about what that would be at the time?

A. It was around sixty or sixty-five dollars.

Q. We will just take your best recollection; sixty or sixty-five, right?

[fol. 203] A. Yes.

Q. We will just take that recollection. Here was Mr. Friedberg, who wanted to pay his personal rent. Now, that was not a business expense, was it?

A. No.

Q. And, it wasn't proper for you to put it in the books as a business expense?

A. No.

Q. And, deduct it from the business income?

A. No.

Col. Windom: I object to this line of questioning.

Mr. Sillman: I think it is highly proper.

The Court: I do not think it is.

Col. Windom: As exceeding the scope of direct examination by many miles.

Mr. Sillman: May I ask this question of the Court? This witness, of course, has testified in detail as to her book-keeping connections, and we certainly ought to be able to go into it and explain.

The Court: You certainly have been doing that very thing.

Mr. Sillman: We certainly should not leave in mid air the explanation of the accommodation items. We would have to call her back.

Col. Windom: You have her subpoenaed, have you not?

Mr. Sillman: May I just pursue that?

The Court: The objection, I think, was to what counsel [fol. 204] was including in his questions, some of the statements interjected by counsel in his questions. That is what the Court had in mind.

Mr. Sillman: I can put that this way, then. I understand, Your Honor.

By Mr. Sillman:

Q. These accommodation checks would be drawn on what bank account?

A. The Buckeye Tailoring Company.

Q. Who would that check be made payable to; the accommodation check?

A. In this case that I was mentioning, to Edith Cockins.

Q. That would be Mr. Friedberg's landlord?

A. Yes.

Q. And it would be, therefore, a check drawn on the business account to pay his personal expense?

A. Yes.

Q. That's what you meant by that?

A. That's what I meant.

Q. Now, in every single instance that Mr. Friedberg—by the way, who drew those checks? Did he ask you to draw them?

A. Yes.

Q. Did you write them up?

A. I would write them up.

Q. He would ask you to write the check and you would actually write them up and he would sign them?

[fols. 205-206] A. Yes.

Q. Now, Mrs. Appl, I want you to tell this jury if in every single instance when you wrote a check or when there was an entry of a check, an accommodation check, a payment out of the business for one of Mr. Friedberg's personal bills and no business bills, if he didn't give you the cash?

A. Yes.

Q. For the amount that the check was written for?

A. Yes, he gave me the cash.

Q. And, I want to ask you to tell this jury if you didn't put that cash in the cash drawer and deposit it in the bank account?

A. Yes, I did.

Q. So that it amounted to nothing more than, Mrs. Appl, that Mr. Friedberg was using a company check for a personal expense account but replacing it with cash?

A. Yes.

Q. Which you deposited back in the bank?

A. Surely.

.

[fol. 207] Q. State, Mrs. Appl, whether or not you ever received money other than income from customers?

A. Yes, I did.

Q. State whether or not you ever received that money from either Mr. or Mrs. Friedberg?

Col. Windom: Object. That, again, is leading.

Mr. Siliman: State whether or not she did or didn't receive it.

Col. Windom: Let her tell what happened.

The Court: She may tell the source of any other money, if there was such money.

Q. Now, confining your answer to money which is not income. State from whom you received this non-income money?

A. Well, Mrs. Friedberg brought money to be deposited in the bank because we were short of funds.

Q. Who received the money?

A. She would give it to me so it could be deposited in the bank.

Q. And, would you deposit it in the bank?

A. Yes.

[fol. 208] Mr. Sillman: That's all.

Redirect examination.

By Col. Windom:

Q. Now, Mrs. Appl, exactly how would you carry that on the books?

A. Well, everything that came in in the line of cash was entered in the cash journal.

Q. What was the entry?

A. I considered that a loan, as loans payable.

Q. Not what you considered. What did you do?

A. I deposited whatever amount was given to me, and that went into our bank to increase the bank balance.

Q. How did you enter it on your books?

A. As a loan.

Q. Why?

A. Well, it wasn't Mr. Friedberg's money. It was considered as a loan from her.

Q. Did anybody ever repay that loan?

A. Some of it was.

Q. When?

A. When the time that he had enough.

Q. Can you name any single instance by date or approximate date?

A. I wouldn't remember that.

Q. How did you carry that entry in your books?

A. I would make out a check for whatever amount I was [fol. 209] told to and mark it accordingly to apply against that loan.

Q. Make a check to whom?

A. To Mrs. Friedberg. She is the one that gave me the money.

Q. How did you carry the entry in your books?

A. As a loan.

Q. I am talking about this repayment?

A. Well, I would apply that against the amount that she loaned.

Q. What entry did you put in the books?

A. Well, I would just—like anything else, when you would pay a bill you would enter the check against it. Is that what you mean?

Q. You have said that Mrs. Friedberg gave you money from time to time.

A. Yes.

Q. That you carried it in your books as a loan from Mrs. Friedberg, is that right?

A. Yes.

Q. Was there ever an entry on those books, to your knowledge, evidencing a loan from Mrs. Friedberg?

A. Why, yes. I would have to—

Q. How many times?

A. Well, it was a number of times, I know.

Q. Approximately how many?

A. I don't know.

Q. Was it six or sixty?

A. It wouldn't be sixty times.

[fol. 210] Q. Was it six or sixteen?

A. We will say six. That would be difficult for me to remember that.

Q. What period of time was this?

A. It was after he became owner of the company.

Q. After he became owner of the company?

A. Yes.

Q. Now, you have said that there have been instances when Mrs. Friedberg was repaid that money?

A. Yes.

Q. How did you carry that repayment on your books?

A. I don't know how to explain it to you.

Q. What entry did you put down?

A. Well, I post from the check that I issued against the amount that she had loaned at that one time.

Q. I am trying to find out exactly what you wrote down on the book in words without reference to the amount. What did you say on the records?

A. I would make an entry, I believe it was loans payable, that's all, and the name, whoever it was.

Q. In other words, you showed loans payable, Frances Friedberg?

A. Yes, and that was made in the monthly journal every month.

Q. How many of those entries should appear on the books after Mr. Friedberg took over?

A. As many times as she loaned money.

Q. Approximately how many would that be?

[fol. 211] A. I don't know.

Q. Was that six or sixty?

A. It wasn't too many times.

Q. What were these amounts you are talking about?

A. Oh, I can't say exactly about that either.

Q. What were they approximately?

A. I would say two and three hundred.

Q. Is that each instance or total?

A. Each instance.

Q. How many would they total altogether? What would be the approximate amount?

A. Well, at the time I was there it would run over \$1500, I believe.

Q. You don't believe it was over \$1500?

A. I don't think so. I am not sure of that, no. I can't remember that.

Q. Mrs. Appl, you have remembered other things in great detail. What is your best recollection?

A. I just don't remember the exact amount. I wouldn't want to say because I don't remember. Figures would be hard to remember.

Q. Mr. Friedberg owned this business lock, stock and barrel, didn't he?

A. Yes.

Q. Why, when he wrote a check for himself out of his own business, his own money, was it necessary to replace it?

A. It was the personal item.

[fol. 212] Q. Is there anything non-personal in that entire business?

A. Well, I was keeping the books for a company, for what transpired there as the company.

Q. What company?

A. The Buckeye Tailoring Company.

Q. Who was the Buckeye Tailoring Company?

A. Mr. Friedberg.

Q. It was strictly a personal matter, wasn't it? Why was it necessary to replace money which Mr. Friedberg took out of his own funds?

A. Why, I had no control over his home or his personal matter.

Q. Is that the only explanation you can give, that you just know nothing about it?

A. I don't know nothing of his personal affairs.

Q. Now, Mrs. Appl, when you recorded income did you show the source of the receipt?

A. Yes, in the cash receipt book.

Q. You did that uniformly?

A. Yes.

Q. What salaries did Mr. Friedberg draw from the old corporation?

A. The amount?

Q. The amount.

A. I wouldn't remember back that far.

Q. You don't remember any salary he drew?

A. He drew salary, but I can't remember the amount.

Q. A single payment?

[fol. 213] A. I remember the time I left there, but the corporation, I don't remember what he drew at that time.

Q. Do you remember what amount Mr. Cohen drew?

A. No.

Q. What was the financial situation of the corporation when it was dissolved?

Mr. Sillman: Is that relevant, really, Your Honor?

Col. Windom: Is is certainly very relevant.

Mr. Sillman: Is it? In what respect? Is the corporation charged with——

The Court: Just a moment. There is no objection. Are you objecting?

Mr. Sillman: I think it is objectionable.

The Court: Overruled. She may answer if she knows.

A. I would say it was in a poor condition.

Q. Actually, Mrs. Appl, Mr. Cohen didn't work for Mr. Friedberg as an employee after Mr. Friedberg took over the business. He actually did custom jobs for him, wasn't that it?

A. Yes.

Col. Windom: That's all.

The Court: At this time, ladies and gentlemen of the jury, the Court intends to take a recess. During the intermission you will occupy the jury room and following the instructions of the Court.

(A brief recess was taken.)

Mr. Sillman: Mrs. Appl, will you resume the stand.

[fol. 214]

MARY CONNELL APPL, resuming the stand, testified further as follows:

Recross examination.

By Mr. Sillman:

Mr. Sillman: Col. Windom was through questioning the witness and I was going to requestion at this point.

Q. You were asked, Mrs. Appl, why was it necessary to replace a check drawn on the business account for a personal expense of Mr. Friedberg with cash?

A. Yes.

Q. You had testified, of course, that in each instance when Mr. Friedberg had you draw up a check on the business account to pay his personal expense, like house rent, that

in each instance he gave you the cash and you deposited the cash in the business bank account

A. Yes.

Q. You have also testified, of course, that Mr. Friedberg did not have a personal checking account?

A. No.

Q. Isn't it a fact, Mrs. Appl, that in the first instance the business bank checking account was used because it was the only checking account?

A. That was the reason.

Q. And, isn't it a fact, Mrs. Appl, that Mr. Friedberg gave you the money when he made that kind of withdrawal from the business account to keep the business records correct?

[fol. 215] A. Yes.

Q. And accurate?

A. Yes.

Q. And true?

A. Yes.

Mr. Sillman: That's all.

Redirect examination.

By Col. Windom:

Q. Couldn't you have set up a personal loan account on your books?

A. But I didn't.

Q. You could have, couldn't you?

A. It could be done, I suppose.

Q. That would be a little simpler than actually handling the cash wouldn't it?

A. I don't know because I didn't handle it that way.

Q. It would be safer, wouldn't it?

A. I don't know.

Q. Mrs. Appl, if Mr. Friedberg would make available to you his records, can you point out to me any loans evidenced on those records, after Mr. Friedberg took over the Buckeye Tailoring, from Mrs. Friedberg?

A. Yes.

Col. Windom: Will counsel make those available to Mrs. Appl?

Mr. Sillman: All of the records of Mr. Friedberg that [fol. 216] your agents have had before are right in the court room and you are welcome to them.

Q. Mrs. Appl—

Mr. Sillman: Wait a minute. You asked me a question. All of the records for 1944 and subsequent years, '45, '46 and '47, which were made available to your agents, are here in the court room and they are welcome to them. They are in those boxes.

Q. Now, Mrs. Appl, between now and tomorrow morning will you please go over those records so that you can point out to me any loans from Mrs. Friedberg evidenced by these records, while you were employed there?

A. Yes.

Col. Windom: Thank you, that is all.

The Court: Call your next witness.

Col. Windom: What about the years prior to '44?

Mr. Sillman: I would like to have to look over—this is what the accountants have furnished us.

ESTEL O. GIFFORD, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Col. Windom:

Q. State your name, please?

A. Estel O. Gifford.

[fol. 217] Q. What is your occupation?

A. Attorney-at-Law.

Q. Where are you located?

A. 83 South High, Columbus, Ohio.

Q. Mr. Gifford, directing your attention to the Buckeye Tailoring Company, Inc., I will ask you if you ever had any connection with that firm?

A. I did have.

Q. When was it, please?

A. In 1941.

Q. What occurred in 1941?

A. I was appointed receiver for the corporation by the Common Pleas Court of Franklin County.

Q. I will ask you, how was the receivership wound up?

A. The corporation was dissolved and assets sold and the funds realized from the assets were distributed under court order.

Q. To whom were the assets sold?

A. Sold to David Friedberg. They were sold at two different times. There are two different orders.

Q. Is that the Mr. Friedberg, the defendant here?

A. Yes, sir.

Q. Now, will you explain about the sale. You said two different dates.

A. The physical assets of the company were sold to Mr. Friedberg at the time the Court authorized the discontinuance of the business, for \$600.

[fol. 218] Q. What do you mean, the physical assets, please?

A. Well, it consisted of thread, buttons, findings, usual things that are found around a tailor shop.

Q. That was \$600?

A. That's right.

Q. What was the other sale, please?

A. The other sale concerned accounts receivable. The Buckeye Tailoring Company had a large number of accounts receivable when I took charge, and as receiver I collected the greater portion of the accounts receivable; that is, the ones that were collectible. I think it was in August, after I had exhausted what I felt was the collectible accounts, I sold the remaining accounts receivable to Mr. Friedberg.

Q. For how much?

A. \$50.

Q. What was the total amount of money, then, that Mr. Friedberg paid you for his total purchases?

A. \$650.

Q. What were those dates, please, Mr. Gifford?

A. I can't tell you the day I actually got the money from Mr. Friedberg now. The order authorizing the sale, I think, was filed on February 10.

Q. Of what year?

A. 1941. And, the order for the sale of the accounts receivable, I am sure, was in August of 1941.

Q. Mr. Gifford, did the general creditors receive any [fol. 219] money upon their obligations?

Mr. Sillman: If the Court please, I object. That's only a prejudiced question.

Col. Windom: He has already testified the thing was defunct.

The Court: Overruled.

Q. Did the general creditors receive any payment on their claims?

A. No, there was no payment to general creditors.

Col. Windom: Cross examine.

Cross examination.

By Mr. Sillman:

Q. Mr. Gifford, I just want to ask one question of you. Was this dissolution a voluntary dissolution?

A. This was an action that was filed by the stockholders of the corporation to dissolve the corporation.

Q. Now, in order that the jury might understand the difference between the technical terms of voluntary dissolution and involuntary dissolution, I want to ask you if this isn't the fact, that under the Ohio law the corporation, the stockholders and directors, by unanimous consent, in fact by two-thirds consent, may voluntarily dissolve a corporation and wind up its affairs. Is that correct?

A. They may file an application with the Court to have that done.

Q. And, they filed a certificate of dissolution with the Secretary of State?

A. That was done in this case.

[fol. 220] Q. And, as one of the procedures in a voluntary dissolution of a corporation—that means where the stockholders themselves decide to wind up the corporation; among other proceedings the corporation's affairs may be wound up under the supervision of a court?

A. That's the procedure that was followed in this case.

Q. After they filed the certificate of dissolution with the Secretary of State, stating that they desired to dissolve the corporation, if they then file an application in the Common Pleas Court for appointment of a receiver to wind up the affairs, the Court generally appoints a receiver, is that right?

A. That's the practice.

Q. And, it is the duty of the receiver, as a disinterested party, to gather in all assets and make all distributions that are to be made, winding up completely the business of the corporation, is that correct, Mr. Gifford?

A. The receiver should collect in all the assets and distribute the assets under the court's orders, yes, to those who have priority.

Q. That's what I said. In other words, the sole object of this kind of a dissolution, Mr. Gifford, is that it places the winding up of the business—the stockholders voluntarily place it under the supervision of the court. That's correct, isn't it?

A. That's what was done in this case.

Mr. Sillman: That's all I wanted to know.

OFFERS IN EVIDENCE

Col. Windom: The Government offers in evidence Government's Exhibit 12 (a), being the safe box entry card and entry slips of the Buckeye Federal Building and Loan Company.

[fol. 221] The Court: Is there objection?

Mr. Sillman: None, your Honor.

The Court: It will be admitted.

(Government's Exhibit 12 (a) was offered and admitted in evidence.)

Col. Windom: The Government offers in evidence Government's Exhibit 13, being the lease of the safety deposit box at the Market Exchange Bank and the entry slips and signatures.

The Court: Is there objection?

Mr. Sillman: None, Your Honor.

The Court: It may be admitted.

(Government's Exhibit 13 was offered and admitted in evidence.)

Col. Windom: I desire to read a portion of this voluminous document. I don't propose to read the text of the lease.

This exhibit, ladies and gentlemen, is dated 2-6-45, headed Lease of Deposit Boxes. Lessee, Handler, Frances F. or Handler, David. Box No. 1293.

Reading here: "We agree and declare that contents of Safe Deposit Box . . . now, or hereafter deposited in said Deposit Box, are and shall be our joint property and owned by us as joint tenants with right of survivorship, and not as tenants in common, and upon death of either of us the entire contents of said Deposit Box shall become the absolute property of survivor.

"The entire contents or any part thereof may be with-[fol. 222] drawn by, or on the order of, either of us, or the survivor.

"It is especially agreed that withdrawals of entire contents or any part thereof shall be binding upon us and upon our heirs, next of kin, assigns, legatees and personal representatives."

Then appears the signature Frances F. Handler and the signature of David Handler.

After the formal portions of the lease: "In Witness Whereof this lease has been executed in duplicate by the lessor and the lessee at Columbus, Ohio, this 6th day of February 1945 and the lessee acknowledges receipt of 2 keys to said box."

Then appears the signatures Frances F. Handler, David Handler, a witness of the Market Exchange Bank. Then the notation 8-29-47, the name A. Wayne Friedberg, or, and then after the word "or," "I hereby appoint Elaine F.

Friedberg my true and lawful deputy who is to have same access to and control of the contents of the above safe that I would have, if personally present, until this authority is revoked by written notice or until knowledge of my death shall come to said lessor."

Then appear the signatures Frances F. Handler and David Handler and to the left Elaine F. Friedberg.

On the signature card which is headed Handler, Frances F. or David, after the word "Renter" appear the signatures Frances F. Handler, David Handler, Elaine F. Friedberg. [fols. 222A-254] EXTRACT FROM STIPULATION FILED IN THE

SUPREME COURT—July 12, 1954

"The following persons testified that they purchased garments from the defendant, under one of his trade names, and paid to him the respective amounts by check all of which checks were deposited in the Buckeye Tailoring Co. bank account. The following witnesses further testified that they never cashed a check with the defendant, with the exception of Roderick, who testified that he had a vague recollection of cashing one or two small checks, about \$10.00 in amount despite the fact that he had previously given an affidavit to the contrary to the District Attorney.

Walter J. Shapter, Jr.	8/26/46	\$ 71.59
	5/15/47	154.50
Martin J. Polster	11/24/45	206.00
John M. Cannata	4/27/46	162.00
Paul C. Kaefer	11/ 4/46	54.68
Samuel W. Roderick	8/ 4/45	70.00
	8/21/47	17.77
Allen L. Kampke	11/19/46	76.37
	6/ 1/46	49.50
Claude M. Bendure	6/21/47	25.00
	8/ 2/47	25.00
John E. Dillie	1947	20.00 (cash)
	6/16/47	51.59
Edward C. Fendt	5/ 5/47	20.00 (cash)
	5/28/47	70.13
Willard G. Lauterbach	3/ 4/47	25.00
	3/25/47	61.52

Chester C. Moelebert	2/25/46	25.00
	4/24/46	44.53
Lucy Roumeliote	1946	20.00 (cash)
	1946	122.00
Albert Vitek	April, 1947	40.00
	April, 1947	35.00 (cash)
Tobias C. Polster	1/25/46	71.59
	9/14/46	69.53
F. & R. Lazarus Co.		
(alterations)	6/20/47	429.80
Arthur E. Lauterbach	8/21/47	40.69

[fol. 255]

OFFERS IN EVIDENCE

Col. Windom: The Government offers in evidence Exhibits 21 (a), 21 (b), 21 (c), with the stipulation that they are the invoices issued to the F. & R. Lazarus Company for alterations by Buckeye Tailoring for F. & R. Lazarus Company; that 21 (a) is the check of F. & R. Lazarus Company in payment for such alterations; that it was deposited in the account of the Buckeye Tailoring Company.

Mr. Sillman: That's agreeable, Your Honor.

The Court: They will be admitted.

(Government's Exhibits 21 (a), (b), (c) were offered and admitted in evidence.)

Col. Windom: The Government offers in evidence Exhibit 26 (a), with the stipulation that Arthur E. Lauterbach, 107 East Deshler Avenue, if called to the stand, would testify that this is his bank statement indicating a payment of \$40.69 to the Buckeye Tailoring Company for the purchase of a suit of clothes, that he never cashed any checks at the Buckeye Tailoring Company, and that this money was deposited in the account of the Buckeye Tailoring Company.

Mr. Sillman: Isn't that the same gentleman——

Col. Windom: No, that's a brother.

Mr. Sillman: But, it is stipulated that that went into the Buckeye Tailoring bank account?

Col. Windom: Yes.

Mr. Sillman: That's agreeable.

The Court: It will be admitted.

[fol. 256] (Government's Exhibit 26 (a) was offered and admitted in evidence.)

Col. Windom: The Government offers in evidence 11 (a) and 11 (b), with the stipulation that if the proper officer from the Ohio National Bank were called he would testify that these represent all of the deposit slips of the Buckeye Tailoring Company except for deposit slips—Would you prefer I read this or just enclose this with it?

Mr. Sillman: Either way.

Col. Windom: There are eleven missing deposit slips that the bank has not been able to find.

Mr. Sillman: Did you give the years?

Col. Windom: They represent—

Mr. Sillman: The years of the deposit slips.

Col. Windom: They represent three in the year 1947, 8 in the year 1946 that are missing.

Mr. Sillman: And, the deposit slips you are holding are for what years?

Col. Windom: The deposit slips I am holding are for the years 1946 and 1947.

Mr. Sillman: I assume that we ought to offer some explanation to the Court and Jury—it should come from you—why 1945—

Col. Windom: I haven't gotten that far yet. I am just worrying with these two exhibits at the present time.

Mr. Sillman: We have no objection to those.

The Court: These are for the years 1946 and 1947, with [fol. 257] the exceptions noted?

Col. Windom: Yes, sir, and I will attach this exception sheet.

The Court: Is there objection to their admission?

Mr. Sillman: None.

The Court: They will be admitted.

(Government's Exhibits 11 (a) and 11 (b) were offered and admitted in evidence.)

Col. Windom: Is it stipulated that for the years 1945 the deposit slips of the Ohio National Bank are no longer available?

Mr. Sillman: That is stipulated. That's what they told me.

The Court: It is so stipulated and agreed.

Mr. Sillman: May it also be stipulated that the white paper that is attached to those deposit slips contains the list of dates and deposits, that those figures were taken from the yellow bank statements that we are all familiar with? The slips themselves the bank has been unable to find. Is that agreeable?

Col. Windom: The correct wording, I think, would be taken from the transcript of the ledger sheets.

Mr. Sillman: All right, taken from the transcript of the ledger sheets.

Col. Windom: If there is any error it is our error, not the bank's.

[fol. 258] EMERSON TAYLOR, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Col. Windom:

Q. Will you state your name, please?

A. Emerson Taylor.

Q. Where do you live?

A. Pickerington, Ohio.

Q. What is your occupation?

A. Chief Office Deputy in the office of the Collector.

Q. What, roughly, are the duties of Chief Office Deputy?

A. You might say, as the title indicates, I am chief of the office operations as distinguished from the field operations.

Q. Now, I ask you whether or not, upon my request, you have made certain investigation of the records of your office?

[fol. 259] A. I have.

Q. What investigation have you made?

A. With the assistance of a file clerk I have gone through the microfilm records of the index cards showing people who have filed income tax returns. I started with the year 1922 and went clear through to the year 1947. The original cards have been destroyed by Congressional authority, and

as those cards are destroyed, before they are destroyed, microfilm records must be made of the cards.

Q. Did you find any records relating to income tax returns filed by persons of the name Friedberg and any combination of the first name David?

A. Yes, I have.

Q. Have you made copies of those from the microfilm files?

A. I have.

Q. Who made those copies?

A. I did myself.

Q. You made those personally?

A. Yes, sir.

Q. What did you find, please?

A. Well, for the year 1922 there is no record of any David Friedberg or any, simply, initial D. Friedberg. That same statement will apply for any year when there is no record.

For the year 1923 there is a David Friedberg. The record shows 1181 Bryden Road. For that year there was also an office audit and amended return. No record of any other one.

[fol. 260] Q. What tax was paid in that year, if any?

A. On the original return \$1.72. On the audit 90 cents, and on the amended return \$18.00 plus 34 cents interest.

Col. Windom: Now, to simplify this, may it be stipulated as to whether or not the defendant ever lived at 1181 Bryden Road?

Mr. Sillman: Yes.

Q. Is that all for 1923?

A. That's all for 1923.

In 1924 he filed a taxable return from 1281 Bryden Road.

Q. In what name?

A. David Friedberg.

Mr. Sillman: Pardon me. To correct the record, his correct address was 812.81 Bryden Road, and this 1181 is probably some typographical error.

The Witness: I noticed that discrepancy.

Q. What, if any, tax was paid on this return?

A. \$18.01, and an amended return was also filed showing a tax of \$13.12 plus 91 cents.

Q. Were there any other Friedberg's in relation to the use of the word David for 1924?

A. None.

Q. What about the year 1925, Mr. Taylor?

A. David Friedberg from apartment 28, 301 Linwood Avenue.

Col. Windom: May it be stipulated as to whether or not that is the David Friedberg?

[fol. 261] Mr. Sillman: He did live there.

Q. What tax was paid upon that return, please?

A. \$7.58.

Q. Were there any other?

A. No other ones.

Q. 1926, please.

A. David Friedberg, 700 Kimball Place.

Col. Windom: May it be stipulated as to whether Mr. Friedberg did or did not live there?

Mr. Sillman: He did.

Q. What were the taxes then?

A. No tax.

Q. Is that all for 1926?

A. That's all.

Q. Give us 1927, please.

A. 1927, David Friedberg, 701 Bedford Place.

Col. Windom: May it be stipulated that Mr. Friedberg lived there?

Mr. Sillman: That's correct.

Q. What taxes were paid?

A. No tax.

Q. Were there any other filings in 1927?

A. No other filings.

Q. 1928, please.

A. No record of any David Friedberg or any D. Fried-
[fol. 262] berg, either one.

Q. What about 1929?

A. No record for that year.

Q. What about 1930?

A. We have a David Friedberg of 131 North Nelson Road.

Col. Windom: May it be stipulated that that was Mr. Friedberg's address?

Mr. Sillman: It may.

Q. What, if any, tax?

A. Non-taxable return.

Q. Were there any other filings for the year 1930 in the name of Friedberg?

A. No other filings.

Q. What about the year 1931, please?

A. No record for the year 1931.

Q. What about 1932, please?

A. No record for 1932.

Q. What about 1933, please?

A. No record for 1933.

Q. 1934?

A. No record for 1934.

Q. 1935?

A. No record for 1935.

Q. 1936, please.

A. No record for 1936.

[fol. 263] Q. 1937?

A. 1937, a David Friedberg for 1520 Menlo Place.

Col. Windom: May it be stipulated that Mr. Friedberg did live there?

Mr. Sillman: He did.

Q. What tax, if any, was paid?

A. No tax.

Q. 1938, please, Mr. Taylor.

A. We have another David Friedberg in that year.

Q. What is the information on the other return?

A. The other is David and Helen Friedberg, 1515 Franklin Avenue.

Col. Windom: May it be stipulated that Mr. Friedberg has never had a wife by the name Helen and never lived at that address?

Mr. Sillman: That may be stipulated.

Q. Are there any others for the year 1937?

A. No other ones.

Q. Give us 1938, please.

A. 1938. The only record that year is for a David H. and Helen Friedberg.

Q. What address?

A. Of 647 Sheridan Avenue, and an audit was later made, showing an address of 1910 Montrose Avenue.

Col. Windom: May it be stipulated that that is not the David Friedberg, the defendant here?

Mr. Sillman: That's correct.

[fol. 264] Q. Are there any other Friedberg's?

A. No other record.

Q. 1939, please.

A. David H. and Helen Friedberg, care of Helen Friedberg, F. & R. Lazarus Company.

Col. Windom: May it be stipulated that that is not the return of this defendant?

Mr. Sillman: It may.

Q. Were there any other for that year?

A. No other.

Q. Give us 1940, please.

A. David Henry Friedberg, 910 Montrose Avenue.

Col. Windom: May it be stipulated either that that is or is not this defendant?

Mr. Sillman: What address?

The Witness: 910 Montrose Avenue.

Mr. Sillman: He never lived there.

Q. Were there any others for the year 1940?

A. No others.

Q. Give us 1941, please.

A. David H. and Helen Friedberg, 910 Montrose Avenue.

Col. Windom: May it also be stipulated that that is not this defendant?

Mr. Sillman: That is correct.

Q. Were there any others for 1941?

[fol. 265] A. No others.

Q. Give us 1942, please.

A. David Friedberg, 1350 Neil Avenue.

Col. Windom: May it be stipulated that that is this defendant?

Mr. Sillman: That's right.

Q. What, if any, taxes were paid that year?

A. The tax paid was \$27.50. The tax declared was \$55.00, but that was the year, at the middle of the year half of our tax liability was discharged and wiped out, so \$27.50 was paid.

Q. Is that all of the returns for 1942?

A. I have a David H. and Helen Friedberg, 1451 Columbus Street.

Col. Windom: May it be stipulated that that is not this defendant?

Mr. Sillman: It may.

Q. Give us 1943, please.

A. David Friedberg, 1350 Neil Avenue.

Col. Windom: There, again, we apparently have a discrepancy. Is that this defendant?

Mr. Sillman: 1350 is the correct address.

Q. What tax was paid on that 1943 return?

A. \$23.75.

Q. Were there any other Friedberg returns for the year 1943?

A. There was an audit on that return.

Q. Pardon me.

A. And \$4.08 additional was paid. There were no other [fol. 266] David Friedberg's that year.

Q. Give us 1944, please.

A. David Friedberg, 180 South Third Street.

Col. Windom: Is that or is that not our defendant?

Mr. Sillman: I would say it is.

Col. Windom: May it be stipulated it is this defendant?

Mr. Sillman: Yes.

Q. What is that address again?

A. 180 South Third Street.

Mr. Sillman: 180 is correct. That is the business address.

Q. What tax was paid that year, please?

A. I cannot tell you the tax paid. His tax liability was overpaid in the amount of \$13.60, which was allowed to him as a credit.

Q. Do you have any other identifying statistics for that year?

A. I do not.

Q. Were there any other Friedberg filings for the year 1944?

A. David H. and Helen Friedberg from 1451 Columbus Street.

Col. Windom: May it be stipulated that is not the defendant?

Mr. Sillman: That's correct.

Q. What about 1945?

A. David Friedberg, 180 South Third Street.

Q. What tax was paid?

A. That year his tax liability was overpaid in the amount of \$451.20 plus interest on the over payment of \$1.41.

Q. Were there any other Friedberg filings for the year 1945?

[fol. 267-277] A. Yes, David H. Friedberg, 1451 Columbus Street.

Col. Windom: May it be stipulated that that is not this defendant?

Mr. Sillman: That's correct.

Q. What about 1946, Mr. Taylor?

A. David Friedberg, 1350 Neil Avenue.

Q. What, if any, tax liability was paid?

A. \$210.

Q. Do you have any other filings on Friedberg's?

A. David H. Friedberg, 1451 Columbus Street.

Col. Windom: May it be stipulated that that is not this defendant?

Mr. Sillman: That's correct.

Q. What about 1947, Mr. Taylor?

A. David Friedberg, 1350 Neil Avenue.

Q. What tax was paid?

A. 1355.57.

Q. Were there any other Friedberg returns for that year?

A. There were no other ones for that year.

[fol. 278] THOMAS J. NERNY, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Col. Windom:

Q. State your name, please?

A. Thomas Nerny.

Q. Where do you live, Mr. Nerny?

A. 553 South Ohio.

Q. What is your occupation?

A. Deputy Collector of Internal Revenue.

Q. How long have you been Deputy Collector of Internal Revenue?

A. Ten years this January.

Q. I will ask you whether or not you had occasion to participate in an investigation of the tax liability of the defendant, David Friedberg?

A. I did, sir.

Q. When was that, Mr. Nerny?

A. I was first called in the case October 10, 1947.

Q. October 10, 1947?

A. 1947.

Q. What occurred on that date?

A. The original examining deputy, Mr. Curtis, who contacted the taxpayer, called the office to request assistance from another examiner to inventory the safety box of the taxpayer, which is the custom.

Q. What did you do?

[fol. 279] A. I went to the taxpayer's place of business where I met the deputy, and the three of us went to the Market Exchange Bank.

Q. Who were the three of you?

A. I beg your pardon. The taxpayer, Mr. Friedberg, Deputy Collector Curtis, and myself.

Q. What did you do at the Market Exchange Bank?

A. We inventoried the safety deposit box of Mr. Friedberg.

Q. What name was that in?

A. It was in the name of Handler; that is, the last name.

Q. And, how was access gained to that box and by whom?

A. With the permission of Mr. Friedberg. I think there were two keys necessary and the bank's key.

Q. And, what did you find in that safety deposit box at that time?

A. There were several insurance policies belonging to the taxpayer.

Q. You may, if you have records, refresh your recollection from your records to be absolutely accurate as to what you found.

A. I can give the fundamental items without access to records. There were insurance policies of the taxpayer. Do you wish the denominations or total amount?

Q. Just the total amount?

A. The approximate amount of the bonds—I had better refresh myself. We inventoried the bonds by individual denomination, took the serial numbers and date of purchase of bonds. There were \$200, face value, of bonds purchased in 1942; \$4525 worth of bonds purchased in 1943; \$5825 worth of bonds purchased in 1944; \$33,075 worth of bonds purchased in 1945; and \$10,000 [fol. 280] worth of bonds purchased in 1946.

Q. What else?

A. \$19,600 of currency.

Q. What was the cash?

A. \$19,600 is the figure I have here, sir.

Q. Other than the insurance policies, the bonds and the cash, were there any other items in the box, sir?

A. That's all I have, sir.

Q. I will ask you whether or not you checked the records of the Market Exchange Bank with relation to the lease ownership and signature cards of this box?

A. I believe that was done by Mr. Curtis.

Q. And, did you have any other connection with the investigation at that time?

A. I returned to the office after the examination of the safety deposit box and was not reconnected with the case until April of 1948 when Mr. Curtis left the Department and I was assigned to continue the case with Mr. Clager.

Q. Will you please describe in detail the form in which you found the cash in the safety deposit box in the name of Handler at the Market Exchange Bank?

A. The cash was in envelopes, to some extent. There were other bundles which had the customary bank band wrapped around them in bundles of \$500. Some of these had dates by the years. There were several bundles that had the date of the month; that is, the month and day [fol. 281] of the month, without the year. And then, there were several envelopes that had no date whatsoever.

Q. Will you please tell us what those dates were and the amount of money in those bundles?

A. There was one envelope dated 12/5/45 containing ten \$50 bills; another envelope the same date containing ten \$50 bills. There were envelopes with no dates. One contained thirty \$5.00 bills, eleven \$10.00 bills, two \$20.00 bills and three \$100 bills. Another envelope with no date: five \$1.00 bills, twenty-seven \$5.00 bills, thirty-seven \$10.00 bills, twenty-two \$20.00 bills and one \$50.00 bill.

Another envelope dated 11/19/45 with five \$100 bills. Another one dated 11/24/45 with ten \$50.00 bills in it. Another one dated 10/7/46 with ten \$50.00 bills and five \$100 bills.

An envelope with no date containing fourteen \$50.00 bills, three \$100 bills. An envelope dated 2/23, with no year, sixteen \$50.00 bills and twelve \$100 bills. An envelope dated 12/28/46 containing seventeen \$10.00 bills, nineteen \$20.00 bills, three \$50.00 bills, eight \$100 bills, and one bundle of twenty-five \$20.00 bills.

An envelope dated 3/27, with no year, containing seven \$10.00 bills, twenty-nine \$20.00 bills, one \$50.00 bill and thirteen \$100 bills. Another envelope dated June 15, with no year, containing twelve \$50.00 bills, fourteen \$100 bills. An envelope dated 3/13, with no year, containing twenty

\$20.00 bills, six \$100 bills. An envelope dated 5/25, with no year, containing twenty \$100 bills. An envelope with no date containing six \$50.00 bills and twenty-seven \$100 bills.

[fol. 282] That was the extent of the cash.

The Court: What was the aggregate amount of the cash?

The Witness: \$19,600.

The Court: What was the total amount of the bonds?

The Witness: I don't have the actual total, sir, except by years. I believe that's in the net worth statement. I can give you the accumulated bonds. We had \$31,000 worth of bonds which were purchased in 1945, \$10,000 worth of bonds purchased in 1946, a total of \$9487.50 worth of Series E bonds.

The Court: Is that the total amount of bonds?

The Witness: Yes.

By Col. Windom:

Q. I will ask you, Mr. Nerny, whether any of the currency in that box was in the old large type United States bills?

A. No, sir.

Q. What was your answer?

A. No, sir, they were all the present size bills.

Q. They were all the new small type?

A. Yes, sir.

Q. Mr. Nerny, I hand you Government's Exhibit 2, which has been introduced in evidence. The Court has asked you a question with relation to the total amount of bonds in the box. Refreshing your recollection now, can you answer that question?

A. The total amount of Series E bonds in the box were \$9487.50, and the total amount of Series G bonds were \$41,000.

[fol. 283] Q. Any other bonds in there?

A. I believe in addition to that there were—I had better refresh my memory again. No, sir, that's all.

Q. Mr. Nerny, take your notes, pencil and paper, and right on the back of your tablet add up the total number of bonds of all denominations, years and everything else in that box.

A. As we found them, sir?

Q. Don't break it down by series. Just add up the total amount of bonds in the box.

A. I have \$53,625.

Q. That's the total amount of the bonds?

A. That's the items I have.

Col. Windom: Cross examine.

Cross examination.

5

By Mr. Sillman:

Q. Mr. Nerny, in arriving at that figure \$53,000 and what?

A. \$625.

Q. How do you arrive at that figure?

A. I have the face value of the bonds that we inventoried in the box. Do you wish the amounts?

Q. No. I am just asking you general procedure. You say you have a memorandum of the face amounts?

A. Of the face value of the bonds as we examined them in the safety deposit box.

[fol. 284] Q. And you have the number of the bonds?

A. Yes, sir.

Q. So, you take the number and the face value and that gives you the total amount?

A. That's right. We add up each bond.

Q. And, you have got \$53,000?

A. Yes, sir, that's the figure I have.

Q. Now, the Government has introduced an exhibit here. That \$53,000 includes Series E bonds and Series G bonds and the total is \$53,000.

A. That's the figure I have as being in the box, sir.

Q. Now, the Government has introduced an exhibit here. You weren't in the room at the time, but it is called Exhibit 2. I have a copy of it here, and it is a purported net worth statement. It shows as of December 31, 1947, \$9487.50 in E Bonds and \$61,000 in G bonds. That is far in excess of your inventory.

A. If my memory serves me correct, there were some additional bonds we found were purchased but not in the box at that time, and, then, there is the computation that

we have made to reduce E bonds to their actual cost because they are purchased—in other words, the face value is \$100 but they could be purchased for \$75. They are discount bonds.

Q. Now, Mr. Friedberg took you to the box on October 10, 1947?

A. That's right, sir.

Q. And this statement is as of 12/31/47. That's December 31. You didn't go back to the box between October 10 and December 31, did you?

A. No, I did not.

Q. In fact, you have never been back in that box, have you?

A. No, sir.

Q. You have only been there once?

A. Right, sir.

Q. No questions were asked you on this subject so I assume that you didn't complete the audit in this case. That was handled by Mr. Clager?

A. I was working with Mr. Clager until the completion of the audit.

Q. But, as to any detailed information or questions that I want to ask about the Government audit, you would not be prepared to answer that in full?

A. No, not in full, sir.

Q. The entire audit from beginning to end, the questions will have to be answered by Mr. Clager?

A. I would say so, sir, in most detailed cases.

Q. You received the call on October 10, 1947 from Mr. Curtis?

A. The office received the call and I was delegated to assist him.

Q. Was Mr. Curtis then employed by the Government as an agent?

A. As a deputy collector.

Q. And, I didn't hear your capacity. Are you a deputy collector?

[fol. 286] A. I am, sir.

Q. You are both employed in the same capacity?

A. We were, sir.

Q. And, is Mr. Curtis with the Department now?

A. He is not.

Q. When did he leave the Department?

A. It was approximately in April of '48, I believe.

Q. Now, a call came into the office and pursuant to that call, which presumably came from Mr. Nerny—

A. I beg pardon?

Q. I mean from Mr. Curtis—you went right over to the Buckeye Tailoring Company and you met Mr. Friedberg there?

A. Yes, sir.

Q. Is that the first time you ever met him?

A. Right, sir.

Q. And, of course, Mr. Curtis was there?

A. He was there.

Q. And the three of you went down to the box?

A. Right.

Q. Of course, when you went down to the box did you know what bank it was in?

A. I believe Mr. Friedberg had informed Mr. Curtis of that. I was not aware of where the box was.

Q. Did you know how that box was carried, whether it it was in Mr. Friedberg's name or in Mrs. Friedberg's maiden name?

[fol. 287] A. I believe Mr. Friedberg had told Mr. Curtis of the name in which the box was in.

Q. In other words, you just went down to the Market Exchange Bank where Mr. Friedberg took you, and that's where the box was opened?

A. Right, sir.

Q. And, when you looked at the card you discovered the names then if you hadn't known it before?

A. I believe that was Mr. Curtis' work, sir.

Q. Mr. Friedberg freely took you down to the box, didn't he?

A. To the best of my knowledge.

Q. Do you remember, Mr. Nerny, when you were in the room where you were counting the money; Mr. Curtis was counting it at one time and then you took over and you started to count the money?

A. I don't remember that incident.

Q. Don't you remember that you did count the money?

A. To the best of my recollection we both counted it and it was verified by Mr. Friedberg as to the amounts.

Q. Mr. Friedberg was standing there and he was watching you count the money?

A. Yes, sir.

Q. It was his money, or, their money?

A. I believe so.

Q. Mr. Curtis did some counting?

A. To the best of my knowledge.

Q. And, you did some counting?

[fols. 288-289] A. In conjunction with Mr. Curtis, I believe.

Q. Mr. Nerny, didn't you make a statement to Mr. Friedberg while that was taking place that "We are going to take a slice of this money"?

A. I don't recall making that statement.

Q. You don't deny making it?

A. I don't recall making it.

[fol. 290] MARY CONNELL APPL, recalled to the stand, was examined and testified further as follows:

Direct examination.

By Col. Windom:

Q. Mrs. Appl, have you had time to examine the records which we discussed earlier?

A. Yes, I have.

Q. May I inquire, without benefit of defense counsel's markers?

A. Yes.

Q. What did you find?

A. I found a number of entries that you questioned me about.

Q. Can you tell us what dates or point them out?

A. I listed them on sheets of paper according to the date and the page numbers.

[fol. 291] Q. Will you tell us what they are now, please?

A. They were entries indicating that the money that Mrs.

Friedberg gave in the company was deposited in the bank and used for the company funds.

Q. Now, can you identify the individual entries for us?

A. Yes.

Q. Will you do that?

A. Yes. Shall I pick out just one? There are a number of them here.

Q. Whatever you care to, Mrs. Appl. Take the stand so the jury can hear you and tell us what the dates are and what your entry is. If you have just an extract or a recapitulation, I have no objection. You may refresh your recollection with that.

A. In 1941 I have listed an entry under April 26. The entry is for \$150 and the page is No. 30.

Q. What, if any, explanation do you have of the entry?

A. I didn't mark the explanation here, but it is under "Loans Payable, Mrs. D. F.," means Mrs. D. F. Friedberg.

Q. What else do you have?

A. February 10, 1941, page 32, an entry of \$1500.

Q. Is that the same situation, Loans Payable?

A. Yes. These are all the same.

April 5, the same year, page 23, \$260.

September 26, same year, page 80, \$250.

October 6, the same year, page 88, \$150.

[fol. 292] Now, this is 1942. January 29, page 124, \$200.

March 6, 1942, page 143, \$250. March 23, 1942, page 143, \$300. March 26, 1942, page 151, \$500.

Then, I found two entries where Mrs. Friedberg was reimbursed and I listed those.

Q. What are those?

A. 1942, March 11, check No. 1247, page 147, \$250. April 11, check No. 1358, page 160, \$100.

Q. Mrs. Appl, did you handle all of Mr. Friedberg's bank accounts?

A. You say all his bank accounts?

Q. That's right.

A. He just had the one, to my knowledge; the Buckeye Tailoring Company.

Q. Well, now, you say that these entries you have detailed represented loans from Mrs. Friedberg?

A. Yes.

Q. As a practical matter of fact, those entries represented withdrawals from Mr. Friedberg's accounts in the banks, did they not?

A. Yes.

Q. Why do you say that they were loans from Mrs. Friedberg?

A. Well, the withdrawals that he made was to pay her back. These two that I gave you.

Q. The money, in the first place, came out of Mr. Friedberg's account, didn't it?

A. No.

[fol. 293] Q. It didn't?

A. No.

Q. Mrs. Appl, you have detailed nine purported loans from Mrs. Friedberg. Were those cash or check?

A. They were cash.

Q. Are you sure about that?

A. I am quite sure.

Q. Now, your second item was what, Mrs. Appl. The \$1500 one.

A. February 10, 1941.

Q. And, that was in what amount?

A. \$1500.

Q. Did you have any other \$1500 items on that day?

A. No.

Q. Did you have any days right around that date?

A. I listed all that I found.

Q. Did you have any \$1500 items around that time?

A. No.

Q. Was that cash or check?

A. Well, the record would indicate whether it was or not. The cash receipt book would indicate.

Q. What do you say it was?

A. Well, that \$1500—I noticed when I went through the books, that was one of the first that was put into the company.

Q. Was it cash or check?

A. Now, I won't say positively, but I know all these other [fol. 294] amounts—I remember of her handing the money, cash.

Q. Mrs. Appl, a few moments ago you told me they were all cash, and I want to be sure.

A. Ail right.

Q. Were they or weren't they?

A. I will say as far as I can remember, then.

Q. Directing your attention to Government's Exhibit 2 (c), to a check of the First Federal Savings and Loan Association, No. C-21686. I will ask you whether the entry you are referring to was cash or check?

A. Well, this shows it was a check.

Q. Will you please tell us what the endorsement is on the other side of that check?

A. The endorsement is "Credit account of Buckeye Tailoring Company by M. Connell, Bookkeeper."

Q. And, who is the check drawn by?

A. The check is drawn by the First Federal Savings and Loan.

Q. Who signed the check?

A. F. F. Handler.

Q. Do you know anything about this First Federal Savings and Loan account?

A. No, I don't.

Q. Did you ever handle it?

A. No.

Q. You know nothing about it at all?

A. No, I don't.

[fols. 295-296] Q. On March 31, 1941 did your records show a loan that date?

A. I don't have that date listed.

Q. Would you say, then, that the records did not show a loan that date?

A. Yes.

Q. Did you show a loan on April 5, 1941?

A. Yes.

Q. And, what was the amount of it?

A. \$200.

Q. Was that cash or check?

A. Do you mean you would want me to remember exactly how that transaction—

Q. Don't your records show what it was?

A. No. It is entered in that record under cash receipts.

In cash receipt book it would show definitely whether it was a check or cash, and the deposit slip would show.

Q. As an actual matter of fact, Mrs. Appl, all of these entries you have read off were check transactions, were they not?

A. No, I don't think so. No, I know. You say all of them? No, because I remember, as I told you the other day, of her handing me cash.

Q. Do you know which one that was?

A. Why no, I wouldn't have any way of knowing.

Col. Windom: Cross examine.

Cross examination.

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[fol. 297] Q. But, the only records that we have been able to give you are these records that go up to '42?

A. That's all I have.

Q. You have not seen the records for '43?

A. No.

Q. Or '44?

A. No.

[fol. 298-300] Q. But, you know that there were records at that time?

A. Yes.

Q. And that you actually kept them?

A. Yes.

Q. We just haven't found them for you. So that when you listed to the jury this series of loans, you listed it from the available records which end in '42?

A. That is right.

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[fol. 301] Q. Did you make any entries which would indicate, or record of transactions between Mr. and Mrs. Friedberg involving money given by her to him for use in the business? Did you make such entries?

A. No.

Q. Did you have personal knowledge of any such transactions?

A. Yes.

Q. Will you relate that?

A. The only thing I handled is the way they were handled there.

Q. You do not, then, have personal knowledge of whether Mrs. Friedberg did or did not at any time give Mr. Friedberg money and he use it and you did not enter it?

A. No.

Q. You have no recollection?

A. No.

Q. No personal knowledge?

A. No.

Mr. Sillman: That's all.

Redirect examination.

By Col. Windom:

Q. The 1943 cash book is available here, isn't it, Mrs. Appl?

A. I didn't see it.

[fol. 302] Col. Windom: Is it available, Mr. Sillman?

Mr. Sillman: We have a cash receipts journal. We do not have the cash receipts and disbursements pages, which are the large yellow pages that are lying on the table there. We think we did have them at one time, but we don't have them now and we have never had it at any time we have been in there.

Q. Did you examine this 1943 cash journal?

A. No. I examined those two years there.

Q. That cash journal would have reflected any claimed loans, wouldn't it?

A. Yes.

Col. Windom: That's all.

The Court: You are excused. Call your next witness.

FRANCIS J. CLAGER, recalled to the stand, was examined and testified further as follows:

Direct examination.

By Col. Windom:

Q. State your name, please?

A. Francis J. Clager.

Q. What is your residence address, Mr. Clager?

A. I beg your pardon.

Q. What is your residence address?

A. 217 East Northwood, Columbus, Ohio.

Q. What is your occupation?

[fol. 303] A. Special Agent with the Bureau of Internal Revenue.

Q. How long have you been a special agent for the Bureau of Internal Revenue?

A. Since February 4, 1946.

Q. I will ask you whether or not you have made an investigation and an audit in connection with the tax liability of David Friedberg, the defendant herein?

A. I have.

Q. When did you start that examination and audit, Mr. Clager?

A. I was assigned to the audit of Mr. Friedberg's income tax returns by my superior, Mr. Sauer, on November 21, 1947.

Q. Did you, in fact, make such an examination and audit?

A. I did.

Q. Will you tell the Court and Jury in your own words about your examination and audit?

Mr. Sillman: I am going to object to that form of question, if it please the Court.

Col. Windom: It is the best evidence. Let him tell what happened.

Mr. Sillman: I know, but after all, there is some limitation to just throwing the doors wide open in personal conjectures.

The Court: The objection will have to be sustained to the question in the form presented.

Q. Tell us how you started the examination, Mr. Clager?

A. After being advised to handle the investigation of Mr. [fol. 304] Friedberg's income tax returns, I contacted Mr. Nerny and Mr. Curtis, who were the deputies who had made the preliminary investigation. I made this contact with them on November 24.

Mr. Sillman: No, I am going to object to this third party evidence of a witness, one who hasn't even been here yet. I am perfectly satisfied to have Mr. Clager tell what he knows.

The Court: He is telling what he did. Let him tell if he made this audit. Go ahead.

A. After reviewing their preliminary investigation I called Mr. Freidberg, or had him called, and asked him to come into our office on November 25. That was the following day. Which he did. At that time I requested that he present us the records he had available with which to verify his income tax returns for the years 1942, 1943, 1944, 1945 and 1946. It was at a later date that we included the year 1947 in our investigation.

Mr. Friedberg presented the records which he stated were available, and they included the following types of records and books: A cash receipts book with entries from July 25, 1942 up to and including December 24, 1947. He presented retail order records for the period January 19, 1942 through the year 1947. He also presented duplicate wholesale invoices for the years 1945, 1946 and 1947. He explained that records prior to that in regard to wholesale invoices were not available.

Mr. Friedberg also presented to me cancelled checks drawn upon the Buckeye Tailoring Company account at the High-Town office of the Ohio National Bank in Columbus, together with the monthly statements for these checks [fol. 305] for the years 1945, 1946 and 1947. I was advised that those were the only checks which were then available. In addition, Mr. Friedberg turned over to me the records for the years 1941 and 1942, which were journals.

With these records I made adding machine tapes of the retail sales as shown by his retail order book for the years

1945, 1946 and 1947, and I also made an adding machine tape of the duplicate copies of the wholesale invoices for the years 1945, 1946 and 1947.

Now, I was advised by Mr. Friedberg that these records which he had turned over to me, in regard to the wholesale and retail sales, were the basis upon which he had prepared his tax return as far as gross receipts was concerned, but the totals I arrived at for the years 1945, 1946 and 1947 were much less than the amount reported on his income tax return.

I advised Mr. Friedberg of the results of my work, that I was unable to reconcile the information he had given me with his tax returns, and he expressed surprise and he could not explain why the books he gave me did not tie out with his tax returns.

Mr. Sillman: If the Court please, I am going to ask that the statement of this witness of "he expressed surprise" and matters of that kind be left out. We are going to hear a lot of it unless we receive a ruling on it. We ask that the witness be confined to what he saw and what he did.

The Court: Yes, you may tell what you saw.

Col. Windom: And what he said.

[fol. 306] Mr. Sillman: What he said is all right.

A. I also noted in examining the 1947 cash receipts book that after the date October 10, 1947, which was the date the taxpayer's safety deposit box was examined——

Mr. Sillman: What's that date?

A. October 10, 1947, which was the date the taxpayer's safety deposit box at the Market Exchange Bank in the name of Handler was examined by the Government agents, that after this date the cash receipts book was prepared in pencil, while prior to that it had been in ink.

Mr. Sillman: Now, again, if the Court please, I am going to offer an objection. This witness, whenever he gets a chance, will interject what some other witnesses did. He didn't examine any box. Now, if he wants to say the entries from October '47 were in pencil, and he saw they were, he may be permitted to testify to that. But, when he injects into this the time when the agents or when somebody else

did something else some place else and he wasn't part of it, he should not be permitted that much latitude in his testimony.

The Court: Were you there when the box was examined?

The Witness: No, Your Honor, I was not present.

The Court: You will only tell what you know.

By Col. Windom:

Q. Mr. Clager, maybe I didn't hear you. Did you say anything about having been present at the examination of that box?

A. No, sir.

Mr. Sillman: He just made a reference to it.

[fol. 307] The Court: He stated this was subsequent to that time. If he had knowledge of it he could state what he observed about the books subsequent to the time of the examination. Of course, he has not been interrogated as to whether or not he had knowledge.

A. My examination of the cash receipts books revealed that prior to Mrs. Appl's resignation alteration income had been reported regularly in the cash receipts book.

The Court: What do you mean by alteration income?

A. Well, sir, included in the business were alterations and this income had to be reported in the cash book.

Q. Will you explain in more detail, in talking to the jury, what you mean by alterations?

A. Well, it would be any understanding of what alterations would be. It would be customers who came in and wanted suits adjusted, and so on, alter the suits, and there would be a small charge of some sort. And this income was reported by Mrs. Appl regularly in the cash receipts book, as shown by my examination, but starting with the year 1945 when Mrs. Friedberg—

Mr. Sillman: Pardon me, if the Court please. I am going to object to this conclusion of "regularly." Let him say the amounts and the dates and let us determine whether it was regularly.

The Court: He may tell what he discovered and what he observed and what he knows. You may proceed in order.

A. Starting with the year 1945, I noted that alteration income was not reported in the cash receipts book. Mr. Friedberg had told me that alteration income had [fol. 308] not been reported after 1944, and he explained that this type of income was used to pay small bills which were necessary to be paid at the store. At another time he explained to me that this alteration income was used to repay loans which had been made to the business.

In examining the cash receipts book for the year 1945 and 1946 and 1947 I noted the use of the entry "Loan, D. Friedberg." During the year 1945 there were 34 such entries recorded in the cash receipts book. It involved a total of \$9,175.00. On questioning Mr. Friedberg he stated to me that these loans represented funds which he had placed in the business and which had been taken from his safe deposit box.

The Court: Represented what?

A. Represented loans to the business, the funds of which he had secured from his safe deposit box.

I have examined my transcript of the safe deposit box at the Market Exchange Bank, which was under the name of Handler, and I found only four occasions where entry to the box corresponded with sums of money being recorded as loans.

In examining the cash receipts book for the year 1946 I found 64 entries marked "Loan—D. Friedberg," and the amounts of these 64 loans totaled \$20,750. I again compared the entries in the cash receipts book marked Loans—D. Friedberg with the safe Deposit record at the Market Exchange Bank and found only three days on which the loan entry in the cash receipt book corresponded with the safe deposit box entry.

I analyzed the 1947 cash receipts book and I found 55 entries marked Loans—D. Friedberg involving \$22,180. In [fol. 309] examining the safe deposit record and comparing it with the cash receipts book in which Loans—D. Friedberg occurred, I found only two instances in which entry to the safe deposit box corresponded with the deposit of funds according to the cash receipts book as a loan.

Due to the fact that there were so many loans and I was unable to establish repayment of these loans, it became

necessary to go further into the item of Loan—D. Friedberg. So, I went to the Ohio National Bank, High Tower office, where the taxpayer maintained his bank account in the name of Buckeye Tailoring Company, and examined the deposit tickets which involved the term Loan—D. Friedberg, and I made transcripts of these deposit tickets. I also made transcripts of deposit tickets which involved the word "Accommodation," which I was told by Mr. Friedberg represented funds which he had put into the account so that he could draw a personal check for personal expenses such as rent, insurance payments, tax payments.

I found that the cash receipts book total for the year 1945 corresponded with the amount credited to the account for that day.

Q. Credited to the account where?

A. At the Ohio National Bank. In comparing the transcript of the deposit tickets which I had obtained from the Ohio National Bank with the cash receipts book, I found many checks deposited to the account which did not appear in the cash receipts book.

For the year 1945 I made transcripts of 61 deposit tickets which supported Mr. Friedberg's deposits in the account at the Ohio National Bank. In analyzing the 61 tickets I found there were 79 checks which were unrecorded in [fol. 310] the cash receipts book that these 79 checks total \$3651.24. That did not include checks which were marked Buckeye Tailoring Company, and therefore would be partially identified.

In examining the 101 deposit tickets which I made transcripts of for the year 1946 I found a total of 223 unrecorded checks in comparing it with the cash receipts book. These 223 checks totaled \$10,360.04.

I made transcripts of 83 deposit tickets supporting the taxpayer's account at the Ohio National Bank during the year 1947. In comparing these 83 deposit tickets with the taxpayer's cash receipt book I found there were 230 checks deposited which were unrecorded on the taxpayer's cash receipts book involving \$9,556.58. I want to point out there were considerable more checks or considerable more deposit tickets which I had not secured copies of from the bank. They are here in evidence.

I would like to explain that in examining the deposit tickets I found that the taxpayer had made the practice of placing in front of the amount of the check the surname of the person who gave him the check. After October 10, 1947 the taxpayer no longer placed this surname in front of the check in depositing it, during the balance of 1947.

On May 5, 1948 I talked with Mr. Friedberg. I presented him with the cash receipts book and I showed him my copies of the deposit tickets, and I asked him if he would explain to me why there would be checks deposited to his account which were not reflected in his cash receipts book. He was unable to give me an explanation, stating that he could not understand.

Our conference ended at approximately 4:25 p. m., according to my diary, and he called me up shortly after that. It was a very few minutes after fifteen until five, which is our normal quitting time. I happened to be there at the time, and he explained to me that these checks which I had asked him about represented checks which he had cashed for customers as a convenience to them.

It was then necessary to establish that such checks were actually cashed and not an element of income to the taxpayer. I went through the numerous surnames that were shown on these checks on the deposit tickets which I had made transcripts of, and I used the uncommon surnames in an effort to establish the individual who had actually given him the check.

Q. What do you mean by an uncommon surname?

A. Well, if I ran into the surname of Brown upon the deposit ticket, of course there are hundreds of Browns in the city of Columbus and it would be useless for me to attempt to locate the particular Brown who had given him the check. So I took the unusual name, such as Fendt. I found in the directory, in phone book, there were very few, usually there were only two or three in the directory, and I contacted people by the name of Fendt.

Mr. Sillman: If the Court please, if this testimony is leading to conversations between Mr. Clager and customers—

The Court: Overruled.

Mr. Sillman: He is going to relate conversations.

The Court: Go ahead.

A. Well, the following of my results of contacting the [fol. 312] various individuals—

Mr. Sillman: Now, I am objecting to this hearsay testimony; conversations between him and somebody else.

Col. Windom: There hasn't been any yet.

The Court: Let's see what the testimony is.

A. It will all be from the records, sir.

On November 23, 1945 I made a transcript of deposit ticket supporting deposit in the taxpayer's account in the Ohio National Bank. The total deposit for that day was \$460. According to the taxpayer's cash receipts book he accounted for this \$460 in the following manner: There was a \$350 Loan—D. Friedberg entry; there was a \$200 correction; there was a \$50 entry from an individual whose name I do not have before me; and there was also an entry in the cash receipts book for \$60 marked Griffith. Those three items make up the \$460 deposit in the bank account according to the taxpayer's cash receipts book.

However, the deposit ticket for that day shows four checks deposited to the account: one from a Polster, one from Griffith, one marked Buckeye and one marked Hill. I have contacted Mr. Polster, Mr. Martin Polster, and he has testified—

Mr. Sillman: Again, I am going to object, if the Court please.

The Court: You cannot tell what he testified.

Col. Windom: He has testified in this court room.

The Court: I understand, and we heard the testimony.

A. Mr. Polster advised me—

[fol. 313] Mr. Sillman: Object, if the Court please.

Q. What exhibit number is that?

A. Exhibit 14.

Q. Mr. Clager, on the entry Polster on that deposit ticket, what was the amount?

A. \$206.

Q. I will ask you whether or not you obtained Mr. Polster's original check?

A. I did.

Q. Did you make a photostat of it?

A. I did, sir.

Q. I hand you what has been marked Government's Exhibit No. 14 and ask you if you can identify it?

A. I can.

Q. What is it, please?

A. It is a photostatic copy of a check of Mr. Martin Polster dated November 24, 1945 for \$206 payable to American Mill Tailors, signed Martin J. Polster.

I obtained a photostatic copy, compared the photostatic copy with the original on July 12, 1948.

Q. Will you proceed to the next item.

A. My transcript of taxpayer's deposit ticket for January 31, 1946 supporting his deposit at the Ohio National Bank—

Mr. Sillman: What's that date?

A. —January 31, 1946 supporting his deposit to the [fol. 314] Buckeye Tailoring account at the High-Town office of the Ohio National Bank shows a deposit of \$334.90. It consisted of \$153.74 in currency and the balance of six checks, one to Mark Lyons \$63.30, Glassburn \$1.50, Roumeliote \$30.77, Polster \$71.59, Chapplelear \$4.00 and Kidwell \$10.00.

The taxpayer's cash receipts book supporting this deposit showed five entries totaling \$71.60 plus an entry marked for Lyons \$63.30, and a loan—D. Friedberg \$200.

I interviewed Mrs. Roumeliote and was advised that she had—

Q. That's the Mrs. Roumeliote who has testified here?

A. Yes, sir.

[fol. 315] Q. Will you proceed and take up the next item, please, Mr. Clager.

A. In examining my transcript of the deposit ticket of January 31, 1946, I noted six checks deposited that day, including a check marked Polster \$71.59. I contacted Tobias Polster. He presented his check in the amount of \$71.59.

Q. I hand you what has been marked Government's Exhibit 18 (a) and ask you if you can identify that?

A. I can.

Q. Is that the check you were referring to, Mr. Clager?

A. This is a photostatic copy of the check Mr. Polster turned over to me.

Q. Go ahead.

A. The photostatic copy is dated January 25, 1946 payable to Buckeye Tailoring Company in the amount of \$71.59 and signed Tobias C. Polster.

Q. Go ahead to the next item, please.

A. My transcript of deposit ticket dated February 26, 1946, supporting the taxpayer's deposit and his checking account at the Ohio National Bank in the amount of \$620, reflects five checks deposited that day. The cash receipts book shows a loan D. Friedberg \$600 that day. Of those five checks I was able to contact one of the five individuals, [fol. 316] one by the name of Moelchart, in the amount of \$25.00, and he presented to me his check in the amount of \$25.00.

Q. Mr. Clager, I hand you what has been marked Government's Exhibit 27 (a). Can you identify it, please?

A. This is the check Mr. Moelchart turned over to me.

Q. Go ahead to the next item, please.

A. My transcript of the taxpayer's deposit ticket dated April 29, 1946 shows seven checks recorded plus \$25.61 in currency, total of the deposit is \$565.00. The cash receipts book showed, supporting this deposit, a loan from D. Friedberg \$500 and an accommodation item of \$65.00. Of the seven checks shown on this deposit ticket I was able to contact the one for \$162.00 marked Cannata. Mr. Cannata presented his check in the amount of \$162.00 to me.

Q. I hand you what has been marked Government's Exhibit No. 15.

Col. Windom: May it be stipulated that Mr. Clager will be able to identify these documents?

Mr. Sillman: Are those the checks that have been introduced? There is no question about that.

Q. Is that the check Mr. Cannata presented to you; I should say a photostatic copy of it.

A. It is.

Q. Go ahead to the next item, please.

A. I also found among the seven checks a check for

\$44.53 marked Moelchart. I contacted Mr. Moelchart and he presented me with his check in the amount of \$44.53.

[fol. 317] Q. This is the same Moelchart concerning which you testified earlier, is that right, Mr. Clager?

A. It would be the same Moelchart.

Q. I hand you what has been marked Government's Exhibit 27 (b) and ask you if that is the check which Mr. Moelchart delivered to you?

A. That is the same check.

Q. Go ahead to the next item, please.

A. Deposit ticket dated May 16, 1948 shows a total deposit of \$551.00 consisting of \$312.50 in currency and four checks for the balance. The cash receipts book maintained by Mr. Friedberg showed a loan on that date supporting this deposit ticket, of \$400. He also showed a check from Carey for \$151. I was able to locate one individual of those four, Mrs. Roumeliote.

Q. That is the lady who previously testified?

A. Whose checks were not available, yes.

Q. Go ahead to the next item.

A. On June 4, 1946 deposit ticket shows deposit of \$805.66. The cash receipts book shows an accommodation entry of \$166.85 and a Loan—D. Friedberg \$500, and in addition, it showed eight other smaller items of receipt. There were two checks deposited on this date, one marked Kempke, one Bauman. Mr. Kempke's check for \$49.50 was examined by me.

Q. I hand you what has been marked Government's Exhibit 17 (a) and ask you if that is the check you refer to?

A. That is the same check.

[fol. 318] Q. Go ahead to the next item, Mr. Clager.

A. On August 26, 1946 deposit ticket shows total deposits of \$221.54 to the account of the Buckeye Tailoring account at the Ohio National Bank. It consists of \$19.62 in currency and six checks for the balance. On that day there is an accommodation entry of \$148.54. Included in the six checks was a check marked Shapter \$71.59. I contacted Mr. Shapter and he presented me his check.

Q. I hand you what has been marked Government's Exhibit 19 (a) and ask you if that is the check you referred to, Mr. Clager?

A. That is the check, sir.

Q. Go ahead with the next item, please?

A. Transcript of deposit ticket supporting the deposit in the taxpayer's account at the Ohio National Bank on November 7, 1946 shows total deposit of \$299.75, including currency deposit of \$14.82. The cash receipts book which supports this deposit shows a loan D. Friedberg of \$200 that day. There was also included in this deposit ticket four checks. I was able to contact the individual who issued the check in the amount of \$54.68 in the name of Kaefer.

Q. I hand you what has been marked Government's Exhibit 16 and ask you if that is the check you refer to?

A. That is the same check.

Q. Go ahead, please.

A. My transcript of deposit ticket supporting taxpayer's account at the Ohio National Bank for November 19, 1946 reflects no currency deposited but reflects four checks totalling \$156.64. Taxpayer's cash receipts book reflects [fol. 319] an accommodation entry of \$156.63 for that day. Of the four checks I was able to locate the one marked Kempke, \$76.37, and he presented his check to me.

Q. I hand you what has been marked Government's Exhibit 17 (b) and ask you if that is the check you are speaking of, Mr. Clager?

A. That is the same check.

Q. I will ask you whether or not that's the same Mr. Kempke to which Government's Exhibit 17 (a) refers?

A. That is the same Mr. Kempke.

Q. Go ahead, please.

A. Transcript of the taxpayer's deposit ticket dated March 26, 1947 shows currency deposited of \$2.37 and the balance consisting of eight checks for a total deposit that day of \$329.38. The taxpayer's cash receipts book reflects on that day a \$25.00 cash receipt from a person whose name I have not before me, a \$44.38 check from Masterton, and a \$250 loan—D. Friedberg.

Of the eight checks deposited as shown on the deposit ticket, duplicate deposit ticket which I have here, there was one marked Lauterbach, \$61.52. I contacted Mr. Willard Lauterbach, who gave me the information I asked for.

Q. What date is this, please?

A. It would be March 25 or 26, 1947.

Q. I hand you what has been marked Government's Exhibit 24 (b) and ask you if that is a photostat of the check you are referring to?

A. It is a photostat of the original check which I had in [fol. 320] my possession.

Q. Now, the next item, please.

A. On May 16, 1947 deposit ticket supporting the taxpayer's account at the Ohio National Bank reflects total deposit of \$481.50. It consists of a check deposited in the name of Grippa and a check marked Buckeye and one marked Shapter and \$65.97 in currency. Taxpayer's cash receipt book supporting this deposit reflected a loan—D. Friedberg in the amount of \$400 and a check—and a receipt from Grippa of \$81.50. I contacted Mr. Shapter and he presented me with his check in the amount of \$154.50.

Q. I hand you what has been marked Government's Exhibit 19 (b) and ask you if that is the check you refer to at this time?

A. It is the same check.

Q. Will you take the next item, please.

A. On May 29 of '47 taxpayer's deposit ticket reflects deposit of \$304.90. Included in this account is \$11.28 in currency and four checks for the balance. The cash receipts book reflects a loan—D. Friedberg \$200 on this day. Of the four checks recorded on the deposit ticket there is one marked Fendt, \$70.13. I contacted Professor Fendt, who presented me his original cancelled check.

Q. How do you spell that name?

A. F-e-n-d-t.

Q. I hand you what has been marked Government's Exhibit 23 (a) and ask you if that is the check you are referring to?

Mr. Sillman: Well, it is, Colonel. There isn't any question [fol. 321] about that.

A. It is the same check.

Q. Go ahead to the next item, please.

Mr. Sillman: That is true of all these customers and it may be so stipulated.

A. I examined the taxpayer's cash receipts book during the period in the vicinity of May 5, 1947 and I found no cash receipt recorded from Professor Fendt. I think he has made testimony previously.

Q. What date is that, please?

A. There will be nothing on that.

Q. What date?

A. May 5.

Q. I hand you what has been marked Government's Exhibit 23 (b) and ask you if that is the receipt you refer to?

A. That is the receipt which Professor Fendt gave me.

Q. Go ahead to the next item.

A. Taxpayer's deposit ticket dated May 23, 1947, supporting his deposit in the Buckeye Tailoring account at the Ohio National Bank, totals \$500. It consists of \$18.61 in currency and two checks, one marked Lazarus \$429.80, and one marked Dillie \$51.59. The cash receipts book for that day reflects loan—D. Friedberg, \$500. I have contacted both F. & R. Lazarus Company, Columbus, and Mr. Dillie, who presented evidence to me—

Mr. Sillman: I object to this sort of an inference, if it please the Court. These are the customers that have been [fol. 322] already introduced, and he says "who presented evidence."

The Court: That part of the answer will be ordered stricken.

Mr. Sillman: It sounds suspicious.

Q. I hand you what has been marked Government's Exhibits 21 (a) and 21 (b) and 21 (c), and ask you if that is the original check from the Lazarus Company that you are referring to and the photostated copies of the records?

Mr. Sillman: It is all conceded.

A. It is the original check handed me by F. & R. Lazarus and the photostatic copies of the—

Q. I hand you what has been marked Government's Exhibit 22. Is that the check you were referring to from Mr. Dillie?

A. It is the same check.

Q. Go ahead to the next item.

A. On June 26, 1947 taxpayer's deposit ticket reflects currency deposited of \$90.51 and eight checks. Added up, the total deposit for the day is \$350.00. The taxpayer's receipt book reflecting this deposit shows \$350 loan—D. Friedberg.

I was able to contact one of the eight persons listed on the deposit ticket. His name was Bendure and it was in the amount of \$25.00. He presented to me his cancelled check.

Q. I hand you what has been marked Government's Exhibit 20 (a) and ask you if that is the check Mr. Bendure delivered to you?

A. It is the same check.

Q. Go ahead to the next item, please.

[fol. 323] A. Deposit ticket dated August 23, 1947 supporting the taxpayer's deposit in the Buckeye Tailoring Company account at the Ohio National Bank reflects total deposit of \$218.50. The cash receipt book reflects four deposits, one of \$10.00, one \$6.50, and one \$10.00 and one \$30.00.

Mr. Sillman: You say four deposits?

A. The cash receipt book reflects four entries of \$10.00, \$6.50, \$10.00 and \$30.00, from individuals whose names I do not have before me. It also reflects a receipt from a person by the name of Semon for \$42.74, Piehl \$76.52, Zimmerman \$10.00, and an accommodation entry of \$42.74.

Of the six checks deposited as shown by the deposit ticket I contacted Mr. Roderick, whose check was in the amount of \$17.77.

Q. What was the amount of the check?

A. \$17.77.

Q. I hand you what has been marked Government's Exhibit 25 (b) and ask you if that is the check Mr. Roderick delivered to you?

A. It is the same check.

Q. Go ahead to the next item, please.

A. I also found on the list of checks a check marked Lauterbach \$40.69. I contacted Mr. Lauterbach, who presented his check to me.

[fol. 324] Q. I forget how I phrased that question, but

the gist of it, will you please refer to your record for September 14, 1946.

A. Yes, sir.

Q. Do you show a check deposited to Mr. Friedberg's account, Tobias C. Polster, on that date in the amount of \$69.53?

A. Yes, on September 14.

Q. I will ask you whether or not your inspection of the cash records showed that Mr. Friedberg picked up such an entry?

A. Mr. Friedberg did not show such an entry in his cash [fol. 325] receipts book.

Mr. Sillman: Now, wait a minute, if the Court please, are you asking such an entry in detail or in gross?

The Court: Are you objecting?

Mr. Sillman: I am objecting.

The Court: Overruled.

Q. What did the cash receipts book show on that day?

A. Well, the cash book totaled \$356.28, consisting of an entry of \$28.75, \$39.53, \$30.00, \$35.00, \$25.00, and a loan marked D. Friedberg \$200.00.

Q. Now, please refer to August 2, 1947.

A. Yes, sir.

Q. I ask you whether or not the bank deposit slip for that day reflects deposit of a check of Claude M. Bendure in the amount of \$25.00?

A. My transcript of the deposit ticket dated August 2, 1947 shows a check from Bendure, \$25.00.

Q. What does Mr. Friedberg's cash records for that day show?

A. It reflects entries from a Capt. T. R.—I am not certain, it looks like Brownley, for \$20.00, R. M. McGinnis \$20.00, H. M. Donahue \$16.51, and Leo North—I would like to correct that. I think there is some correction needed. Capt. T. R. Brownley \$20.00, R. M. McGinnis \$16.51, H. M. Donahue or Donam \$12.00, and Leo North \$5.00. Also entries for Whaley \$7.94 and French \$686.96.

Q. Is that all of the entries for that date?

A. Those are the entries.

[fol. 326] Q. Directing your attention to March 6, 1947.

I will ask you whether or not the bank deposit slips show a check from Willard G. Lauterbach in the sum of \$25.00?

A. I will have to have the originals, which are in evidence. I do not have a copy of that.

Col. Windom: Do you know what the exhibit number is on it?

Mr. Sillman: 27 (b), and there is no question about it.

Col. Windom: No, you are confused.

A. There were two deposits on this date of 8/6/47. One deposit reflects total deposit of \$189.18 and reflects also a check for \$25.00 with the name Lauterbach in front of it.

Q. Will you tell us what Mr. Friedberg's cash records for that day show?

A. I can only state that the check of Willard Lauterbach did not appear in the cash receipts book.

Q. Directing your attention to August 4, 1947. Do you have a transcript of the bank deposit slip for that day?

A. I have.

Q. Does that slip reflect a check from S. W. Roderick in the sum of \$70.00?

A. Yes, the deposit ticket of which I have a duplicate here is dated August 8, 1947 and it reflects check marked Roderick \$70.00, and the deposit ticket is for \$289.05.

Mr. Sillman: What is the date of the deposit you are now talking about?

[fol. 327] A. August 8.

Col. Windom: The check is dated August 4, bank payment is dated August 9.

Mr. Sillman: And, Roderick is the name?

Col. Windom: S. W. Roderick.

A. There were four checks on that day and one is Roderick.

Q. What do Mr. Friedberg's cash books reflect for that day?

A. Mr. Friedberg's cash book reflects a loan—D. Friedberg \$200.00 and an accommodation in the amount of \$65.00, and also a check for \$24.05 from a Roundeville, apparently. I can't make it out for certain.

Q. What other action did you take in examining and auditing Mr. Friedberg's accounts?

A. Well, I went into detail in regard to his financial position at the start of the period under review.

Q. What did you do and what did you find?

Mr. Sillman: Now, if the Court please, I think that that is a pretty broad general question, and I would prefer it if the examination were confined to specific questions.

The Court: Overruled.

A. I contacted a representative of the State Mutual Life Insurance Company, who presented to me photostatic copies of loans made by Mr. Friedberg on his life insurance policies with that company. These loans took place during 1931 to 1935. Final payment was made in '35.

Q. I hand you what has been marked Government's Exhibits 4 (a) and 4 (b) and ask you if those are photostatic copies of the records you have just referred to?

[fol. 328] A. They are the photostats given me by the company representative.

Q. What else did you do, Mr. Clager?

A. I also examined records at the Franklin County Courthouse regarding a deficiency judgment—regarding the deficiency judgment secured by the Home Owners Loan Corporation against David Friedberg.

Q. And, Mr. Clager, are those records you refer to the records produced here, offered in evidence as Government's Exhibits 6 (a) and 6 (b)?

A. They are the same records.

Q. What else did you do, please?

A. I also checked into Mr. Friedberg's loan from the Home Owners Loan Corporation which was secured in 1933, as shown by our courthouse records at the Franklin County courthouse.

Q. What did you find?

Mr. Sillman: Is that an exhibit?

Col. Windom: Yes.

A. I found that Mr. Friedberg had refinanced his loan on his residence at 131 North Nelson Road.

Mr. Sillman: If the Court please, here is a witness who is attempting to testify as to the purport of an exhibit. If it is in evidence and he wishes to read from it, well and good, but I don't like his interpretation.

The Court: That is true. The exhibit is the best evidence.

Col. Windom: I am confused, Mr. Sillman. You asked me if that was in evidence. Those were the court records. [fol. 329] The original loan records are not——

Mr. Sillman: Are you asking this witness a question about an exhibit that isn't even in evidence? Then I object again.

The Court: Sustained.

Q. What else did you do, Mr. Clager?

A. I also made an investigation regarding Mr. Friedberg's loan from the National Life Insurance Company of Vermont, which was guaranteed by the Federal Housing Administration. This loan took place in 1939. I also secured a copy of a financial statement in the files of the National Life Insurance Company of Vermont signed by Mr. Friedberg, in which he shows \$150 currency on hand at that time.

Q. To save me looking through these exhibits, you have been in the court room during this entire trial, have you not?

A. I have, sir.

Q. Is that Government's Exhibit 7 (a) that you are referring to?

A. Yes, sir.

Mr. Platt: There is only a 7.

Col. Windom: Pardon me. Exhibit 7.

Q. What else did you do, Mr. Clager?

A. I made an analysis of the taxpayer's 1941 and 1942 records which were presented to me.

Mr. Sillman: If the Court please, we object to any evidence on 1941 and 1942. Those years are not involved.

The Court: Overruled.

A. I made an analysis of the books just mentioned in [fol. 330] regard to funds placed in the business. My analysis shows that on February 10, 1941 the taxpayer re-

ceived \$1500 which was placed in the business. I found from my investigation that on February 11, 1941 a withdrawal was made from the savings account No. 8070 at the First Federal Savings and Loan in the name of D. F. or F. F. Handler in the amount of \$1500. I inspected a check issued by the First Federal Savings and Loan supporting the withdrawal of \$1500 and that check has been introduced in evidence.

Q. Is that a part of Government's Exhibit 2 (c), Mr. Clager?

The Court: There is no dispute. The check is in evidence.

A. It is the same exhibit.

Mr. Sillman: There is no dispute about any of those checks.

Q. What was the date of this withdrawal from the savings account?

A. On 2/11, February 11, 1941, and it shows it was processed through the City National Bank on the same date, 2/11/41, and bore the endorsement Buckeye Tailoring Company by M. Connell, Bookkeeper.

Q. What is the date that you noticed the entry of \$1500 into Mr. Friedberg's records of that business?

Mr. Sillman: Has that been identified? You said entry.

Col. Windom: He just testified about it.

A. I have it recorded as 2/10. February 10, 1941.

Q. Go ahead, Mr. Clager?

A. My examination of the books presented to me for the year 1941 by Mr. Friedberg showed that on February 21, 1941 there was an entry of \$500 as having been put into the business.

Mr. Sillman: I don't understand that, if the Court please. [fol. 331] That is a peculiar phrase. I don't understand it.

Q. Would you explain it a little more in detail.

Mr. Sillman: If it is a loan, let's call it that.

A. There was a \$500 entry which would increase the working capital, and on the same date there is a note which

was given to me by Mr. Friedberg, which was issued to Nathan Weiss.

Q. What was the amount of it?

A. Which supports the \$500 and which I was told by Mr. Friedberg, which was represented to me to be a loan by Nathan Weiss to Mr. Friedberg.

On March 31, 1941 there is an entry in the records of \$100.

Mr. Sillman: If the Court please, I will not be able to follow this witness if he says there is an entry in the records unless he tells us what kind of an entry it is. We are not going to be able to find this. He knows what the entry is.

The Court: I think the witness ought to be more specific.

Mr. Sillman: He just doesn't like the word loan.

The Court: Maybe he doesn't think it is a loan. I doubt whether you have a right to characterize it or the witness. He can relate the factual background and situation. That may be a question for the jury to determine.

The Witness: Without the actual records, sir, at this time I would be unable to establish it other than it represented funds flowing into the business.

The Court: Unless you have knowledge of that fact, the [fol. 332] Court will have to order your answers stricken. Do you have any personal knowledge?

The Witness: Well, I examined the records.

The Court: Do the records show?

The Witness: The records show that there was \$100.

The Court: What record?

The Witness: The 1941 cash receipt record.

Mr. Sillman: Is he talking about the record flowing into the business or is he talking about the record showing something else?

The Court: You will have to relate what the record shows.

The Witness: Well, the records will show that on March 31, 1941 there was \$100 loan to the business.

The Court: I think that will satisfy Mr. Sillman.

Mr. Sillman: Yes, if it is a loan, call it that.

The Court: Do you have further questions.

Col. Windom: I assume Mr. Clager is anticipating my question.

Q. Have you traced the source of that money? If have, let us have it.

A. I find that there was a withdrawal on the same March 31, 1941 of \$100 from savings account No. 8070 the First Federal Savings and Loan in the name of I or F. F. Handler. There was no check issued on that at the bank, from my investigation.

Q. Go ahead, Mr. Clager. What else did you find

A. My examination of the records shows on April 5, [fol. 333] there was a \$200 loan to the business, and the savings account No. 8070 in the name of D. F. or Handler at the First Federal Savings and Loan reflects withdrawal on that same day, April 5, 1941, in the amount of \$200.

On March 26, 1941 the records reflect a repayment reduction in the loan account of \$150.

On September 26, 1941 the books reflect a loan to business of \$250. The records of the Park Federal Savings and Loan Association, Columbus, account No. 3472, in the name of Frances F. Friedberg, reflect a withdrawal of \$250 on September 26 of 1941.

On September 11, 1941 there reflects a reduction in loan account of \$50.00. Examination of the notes payable to Nathan Weiss reflects a reduction from \$500—there is a \$450 note.

On October 6, 1941 there is shown a loan to the business of \$150. The Park Federal Savings and Loan Association account No. 3472, in the name of Frances F. Friedberg reflects a withdrawal from the account on 10/6/41 of \$150. The original check issued by the Park Federal Savings and Loan to Mrs. Friedberg has been introduced in evidence.

Q. Those are in evidence, Exhibit 2 (b), is that correct?

A. Yes, that's correct.

Q. Go ahead.

A. That left a balance in the loan account of \$250 at the end of 1941.

On January 29, 1942 there is a \$200 loan to the business [fol. 334] shown by the taxpayer's records, and the Park Federal Savings and Loan account No. 3472 reflects on that day a withdrawal in the amount of \$74.41.

On March 6, 1942 there is an additional loan to the

ness of \$250. On that same day the account 8070 at the First Federal Savings and Loan, in the name of Handler, reflects a withdrawal of \$158.55.

On March 23, 1942 there is an entry showing loan to the business of \$300, and on March 23, 1942 there is a withdrawal from the account No. 8070 at the First Federal Savings and Loan account in the name of Handler in the amount of \$300.

On March 11, 1942 there is a reduction in the loan account of \$250, and on the same date account No. 8070 at the First Federal Savings and Loan in the name of Handler there is a deposit of \$241.06. The original deposit ticket in regard to that matter is in evidence and reflects the whole \$250.

Q. That is one of the sub exhibits 2, is it not, Mr. Clager?

A. It is.

On March 26, 1942 there is an addition to the loan, as shown in the taxpayer's records, of \$500, and there is a withdrawal from the savings account 8070 at the First Federal Savings and Loan in the name of Handler in the amount of \$500.

On April 11, 1942 there is a reduction in the loan account of \$100 and there is a deposit on April 13 in the savings account 8070 at the First Federal Savings and Loan in the name of Handler in the amount of \$100.

On June 11, 1942 there is a further reduction in the loan [fol. 335] account of \$50, and I examined a note given by Nathan Weiss to Mr. Friedberg which was for \$400, a reduction from the previous note.

Mr. Sillman: Given by Mr. Weiss to Friedberg?

A. Given by Mr. Friedberg to Mr. Weiss.

And, that is the extent of the loan record that I could find in the taxpayer's records.

Q. What other investigation did you make, Mr. Clager?

A. I also examined the taxpayer's cash receipts books from July 1942 through November 15, 1944, which were available, and I found only one reference to a loan during that period.

Q. What period is that?

A. That's from July 25, 1942 to November 15, 1944. And,

I found only one reference to a loan, that being in the amount of \$60.00, repaid to Mrs. Friedberg by check.

Q. What else did you do?

A. After examining the taxpayer's records and verifying them, I determined that the books were inadequate for a proper determination of the taxpayer's income tax returns as filed.

Mr. Sillman: Now, if the Court please, I object to that.

The Court: Yes. You can tell what you found, Mr. Clager.

Mr. Sillman: I ask that it be stricken.

The Court: It will be ordered stricken.

Q. Mr. Clager, were the taxpayer's records sufficient for you to make an audit to determine his tax liability?

A. They were not sufficient.

[fol. 336] Q. What did you do then, please?

Mr. Sillman: I still object to that conclusion.

The Court: Overruled.

A. I then prepared a statement of the taxpayer's net worth for the years 1941, December 31, 1941, for each year to and including the year 1947.

Q. Will you explain how you did this, please?

A. I listed upon this schedule all of the assets and all of the liabilities which during the investigation I could substantiate. I accepted Deputy Collector Nerny's distribution of the currency which he found in the taxpayer's safe deposit box.

Mr. Sillman: I object, if the Court please. I object to that statement. If one agent is accepting something that someone else has done, I think that is improper.

The Court: He may tell what he did.

Mr. Sillman: He says in doing this he accepted what somebody else did, which is part of what he was supposed to be doing.

The Witness: I wasn't present during the counting so I had to accept his figures, sir.

Q. What do you mean by accept, Mr. Clager. Will you explain it so it can be understood readily.

A. Well, Mr. Nerny, as I understood, examined the tax-

payer's safe deposit box and found therein currency and some of the currency was marked as to dates. We found \$2000 was marked with the year 1945, the identification. We found \$3,000 additional which was marked the year [fol. 337] 1946, and the balance of the currency was either marked with the year '47 or had no specific markings upon it, merely the date, the month or the day, but not the year.

So, the currency was allocated. We allocated \$14,842.36 to the year 1947 because it was not identified, and it was counted in the year 1947. From the markings on the currency for the year 1945 we allocated \$2,000 as being on hand at the end of 1945, and the \$2,000 plus the \$3,000 which was marked with 1946 upon it, we allocated the \$2,000 and \$3,000, or \$5,000, to the year 1946.

Mr. Sillman: I object, if the Court please, to that allocation used by this witness. It is purely arbitrary.

The Court: He has a right to tell how he arrived at the net worth, if he did arrive at the net worth of this taxpayer.

Mr. Sillman: It is an arbitrary procedure.

The Court: It is the agent's procedure. As to whether or not it is arbitrary is another matter to be determined.

A. On this net worth I have listed the bank accounts which—

The Court: Now, you must have a net worth for each year before this witness can testify.

Col. Windom: The exhibits are in evidence by stipulation, the very thing he is reading from.

The Court: I understand, but what was his net worth at the end of the taxable year? Is he able to answer that?

Col. Windom: Not being an accountant I don't know.

The Court: You must have a starting point, and that is [fol. 338] the commencement of the year.

Q. Start at the beginning and go through it, please, in sequence.

A. We commenced with the date December 31, 1941, which was the year—1942 was the first year which we had under investigation. At the end of December 1941 we found the taxpayer to have the following assets: A checking account at the Ohio National Bank in the name of Buckeye Tailoring Company, balance \$635.34. We found an account

at the Park Federal Savings and Loan in the name of Frances F. or David Friedberg for \$874.41.

Mr. Sillman: Now, if the Court please, if I may interrupt at this point. All of those figures have been stipulated. Your Honor was just reaching the point that is involved. There is no particular advantage, as I see it, for the witness to continue to read all of these figures that are stipulated, but this alleged net worth statement starts out with an assumption of zero cash, and we object to a discussion——

The Court: I assume because of the remarks of the Court the witness is starting with the net worth statement as of the calendar year 1942.

The Witness: I am showing what assets the taxpayer was known to have had as of December 31, 1941.

The Court: In other words, it seems to the Court that it is necessary to show a net worth statement at the commencement of the calendar year.

Mr. Sillman: The difficulty, Your Honor, is that this net worth statement shows up at the top cash zero, and we ob- [fol. 339] ject to that assumption on the part of this witness.

The Court: You may object to the manner in which he reached his conclusions, but the witness has a right to state the factual background upon which he arrived at his net worth conclusion.

Mr. Sillman: Well, the figures are all stipulated.

The Court: Are you willing to stipulate as to the net worth of this defendant at the commencement of that taxable year and that taxable year?

Mr. Sillman: Definitely not, because no cash is credited.

The Court: The Court will have to allow the witness to give the factual background upon which he bases his statement as to the net worth of the defendant if he has such a statement to make, with the instructions that the net worth must be shown at the commencement of the taxable year and the manner in which you arrived at the net worth for each year to which you testified, if you do so testify.

By Col. Windom:

Q. Mr. Clager, will you proceed with Exhibit No. 2 and tell us how you arrived at the net worth for each year. I am not at this time asking you back of December 31, 1941. I will come to that later.

A. I beg your pardon. Do you wish that I give you the details?

Q. Go over the details of how you arrived at this net worth statement, starting with December 31, 1941.

A. My investigation disclosed he had this account which I previously mentioned, in the Ohio National Bank at the Buckeye Tailoring Company. An account at the Park Federal Savings and Loan, No. 3472; the balance at the [fol. 340] end of '41 of \$874.41. There was an account at the First Federal Savings and Loan Association, Account No. 8070, in the name of D. F. or F. F. Handler, and the balance on hand at the end of '41, \$4133.94.

Those were the only bank accounts which investigation disclosed as of that date.

Q. What else, if anything, did you find?

A. There were securities at Vercoe and Company totaling \$1970. The account was in the name of A. Wayne Friedberg. We found a merchandise inventory of the Buckeye Tailoring Company at the end of '41, \$855.19.

Q. How did you arrive at that figure?

A. We arrived at that from the taxpayer's records. He had not filed a return for the year '42 which disclosed his opening net worth, so we had to use his records.

I included in the net worth of December 31, 1941, \$600 for equipment in the Buckeye Tailoring Company, which Mr. Gifford has testified to.

Q. How did you arrive at the figure \$600?

A. Mr. Gifford advised me that \$600 was the amount Mr. Friedberg had paid for his equipment.

Q. Go ahead.

A. I also included in the net worth as of December 31, 1941, \$1500 for household furnishings. This item was secured from Mr. Friedberg's financial statement which he had presented to the National Life Insurance Company of Vermont in securing a Federal Housing Administration loan October 20, 1939.

[fol. 341] We also included in the taxpayer's net worth at the end of 1941 unimproved lots on Roosevelt Avenue at the cost of \$1450. This was verified by cancelled check which was issued by the Park Federal Savings and Loan, which is on exhibit as 2 (b).

Also included in the taxpayer's net worth at December 31, 1941 was an item of \$200 for an unimproved property in O'Shaughnessy Hills, Franklin County. This \$200 was secured from the valuation as shown by the Franklin County courthouse records. There was no other valuation available to me.

The total of the assets I have just enumerated is \$12,218.88.

Now, from these total assets at the end of 1941 I have taken the item of notes payable, \$450. That consists of a note outstanding and due Nathan Weiss.

Q. I ask you whether or not that is the note you have just testified about, including several payments on it?

A. That is the same note.

Q. Go ahead.

A. There were no other liabilities known to exist at the end of 1941, so we took from the assets I have enumerated previously the \$450 in liabilities, which gave us a net worth of \$11,768.88, and that was our starting point with this investigation; that amount of net worth.

The Court: That was at the commencement of what year?

The Witness: That's at the opening of the 1942 year.

Q. Now, will you give us the end of 1942, please?

A. At the end of 1942 investigation disclosed that there [fol. 342] were two bank accounts in existence with balances in them. The first one at the Ohio National Bank, Buckeye Tailoring Company account, balance of \$641.27. In addition, there was a bank account at the First Federal Savings and Loan Association in the name of D. F. or F. F. Handler, account No. 8070, in the amount of \$3997.26.

Other assets at the end of 1942 consisted of the previously mentioned stocks which were purchased through Vercoe and Company, Columbus, \$1970. There were Series E bonds purchased with a cost of \$150. There was an inventory in the Buckeye Tailoring Company, merchandise, of \$4260.

Q. Where did you get those figures?

A. I got those from the taxpayer's records because in the year 1943 he did not file a return which would reflect his inventories.

Q. Go ahead.

A. I have included in the equipment account, Buckeye Tailoring Company, an adjusted basis of \$540. At the beginning of 1942 we had it at \$600, and we allowed him a depreciation of \$60 or 10 per cent a year. We have the same household furnishings at \$1500, as I previously mentioned. The lot on Roosevelt was no longer available to the taxpayer so it was taken from the net worth. The unimproved property in O'Shaughnessy Hills remains in the net worth at the end of '42 because he still owns it, which gives us a total assets of \$13,258.53.

And from these total assets we take the liabilities away from them, which consisted of only one item, notes payable, Nathan Weiss, at the end of 1942. It was \$400. So that the net worth at the end of 1942 would be \$12,848.53.

[fol. 343] Q. What, if any, increase was that for the year?

A. That was \$1089.65.

Q. Now, Mr. Clager, I notice here that you testified that as of the start of 1942 Mr. Friedberg had the unimproved property on Roosevelt Avenue which you listed as \$1450, and you dropped that at the end of 1942. Why did you drop it, please?

A. There are court records in Federal Court, I believe, in which there was a suit.

Mr. Sillman: Now, if the Court please, is this witness going to testify as to what records may show? The item is here stipulated.

The Court: Are you objecting?

Mr. Sillman: I am.

The Court: Sustained.

Col. Windom: Will you stipulate, if you are interested in saving time, that he in that year ceased to have that property and no income was received from it?

Mr. Sillman: Yes, and we have stipulated every single figure on this sheet; that is, the asset figures, with the exception of the cash figures and with the exception of the

personal accounts that belonged to the children or Mrs. Friedberg or which she may claim.

Q. Will you give us your calculations as of the close of 1943, please.

A. Yes, sir. At the close of 1943 investigation disclosed the taxpayer had four bank accounts: One at the Ohio [fol. 344] National Bank, checking account, balance of \$2669.35; account at the First Federal Savings and Loan, No. 8070, balance \$4080.98; account in the name of——

Q. Pardon me, whose name was that in?

A. That was in the name of D. F. or F. F. Handler.

Account at the First Federal Savings and Loan which was opened during the year of 1943, in the name of A. Wayne Friedberg, balance \$312.13.

Q. I will ask you if you know——

Col. Windom: Pardon me. It has been stipulated that A. Wayne Friedberg is the son of this defendant?

Mr. Sillman: Yes, sir.

Q. I will ask you if you know how old Wayne Friedberg was in the year 1943?

A. Fifteen years of age, approximately.

Q. Go ahead.

A. The fourth account was at the Buckeye State Building and Loan Company, Columbus, account No. 98575, in the name of Frances F. or David Friedberg. It was opened during the year 1943. The balance at the end of '43, \$614.97.

In addition to the bank accounts I have just enumerated there were stocks on hand secured from Vercoe and Company in the amount of \$1970. There were bonds purchased which totaled at the end of 1943, \$3562.50. There was an inventory of merchandise at the end of 1943 used by the Buckeye Tailoring Company of \$4822. That amount was secured from the taxpayer's income tax return filed for the [fol. 345] year 1944. The Buckeye Tailoring Company equipment account was reduced from \$540 to \$480 because of adjustment for depreciation. Household furnishings remained at \$1500. The unimproved lot, O'Shaughnessy Hills, Franklin County, remained at \$200, which gave him total assets available at the end of 1943 of \$20,211.93.

From that we took the liabilities known to exist, which was a note payable and which is for \$300, which left a net worth at the end of 1943 of \$19,911.93.

Q. What, if any, increase in net worth did that amount to in 1943?

A. Based on the above figures I have just read it reflected an increase of \$7053.40.

Q. Is that for the twelve months of '43?

A. That is for the full twelve months.

Q. Will you give us the figures for the end of 1944, please?

A. Bank accounts consisted of six in all. The previously mentioned Ohio National Bank account of the Buckeye Tailoring Company had a balance in it of \$4850.08. The account at the First Federal Savings and Loan Association in the name of D. F. or F. F. Handler, \$6061.46. Account in the name of A. Wayne or Frances Friedberg, No. 13980, at the First Federal Savings and Loan, \$886.73. The previous account in the name of A. Wayne Friedberg had been closed, the balance transferred to this new account. There was also a savings account, No. 13889, at the First Federal Savings and Loan Association in the name of Elaine or Frances Friedberg; balance at the end of 1944, \$276.77. The account at the Buckeye State Building and [fol. 346] Loan Company, No. 98575, was closed and a new account, 70855, was opened in the name of Frances F. or David Friedberg. The balance in this account was \$3475.03. There was also a new account opened during the year 1944 at the Franklin Federal Savings and Loan Association, No. 12743, in the name of Frances or David Friedberg; the balance at the end of 1944 in this account, \$1413.29.

The stocks which I previously mentioned purchased at Vercoe and Company were still available to the taxpayer in the amount of \$1970. United States Bonds, Series E, were increased from \$3562.50 to \$7931.25. The Buckeye Tailoring Company merchandise inventory account, as shown by the income tax return, was \$5691.06. The Buckeye Tailoring Company equipment asset, adjusted for depreciation, was \$420. The household furnishings remained at \$1500. The unimproved property on O'Shaughnessy Hills remained at \$200, which brought his total assets to \$34,675.67.

From these total assets, I took from this figure notes payable, a liability, to Nathan Weiss. At the end of 1944 that was \$250. There were no other known liabilities known to have existed at that time owed by Mr. Friedberg.

Q. What, if any, net increase did that give him for the twelve months of 1944?

A. The increase between 1943, at the end of 1943, and at the end of 1944, was \$14,513.74.

[fol. 347] Q. Mr. Clager, you heretofore have given us your net worth computations for the year 1942, 1943 and 1944. Will you please give us your computations for the the year of 1945.

A. I would like to mention that I gave the increase for the year 1944 in the net worth. I have not given you the expenditures, personal expenditures, which would bring the total income into view.

His net worth, as I testified yesterday, as shown by my schedule, was \$14,513.74 at the end of 1944. Now, during the year he had made certain expenditures which I would have included in order to determine his net income. They include the following items: Life insurance premiums paid during the year 1944, \$653.51; income tax actually paid during the year 1944, \$193.43; rental expenses on his personal residence, \$780.00. Total personal expenditures we have included in the schedule, \$1626.94.

[fol. 348] Added to his increase in net worth during the year 1944 brings a net worth increase in personal expenditures of \$16,140.68. From this item we have deducted the standard deduction allowed by law of \$500, which gave him a net taxable income on a net worth basis of \$15,640.68.

Q. Give us the 1945 now, please.

Mr. Sillman: I want the record to show our objection to the witness' reference to his last figure as being in fact net taxable income. Now, he has said that it was net taxable income under the net worth expenditure theory, and I don't think that the witness should be permitted to testify that that figure, which is the last figure on this net worth statement, is in fact net taxable income. It couldn't possibly be claimed as being net taxable income in fact. It is purely assumed to be under a theory, if the net worth expenditure

theory is correct and if it is properly applied and if the net worth statement is correct in every detail. If there is any single error, omission, or otherwise, in the net worth statement, the net worth increases are wrong, and this is purely a piece of circumstantial evidence offered by the Government from which it is asked that an inference be drawn.

When this narrates these figures and when he comes to his last figure and calls that net taxable income, that is improper because it is not and couldn't possibly be claimed as being in fact a computation of net taxable income. The very net worth expenditure theory itself is diametrically opposed to the idea that this is a method of actually computing tax. So, I object to that.

[fol. 349] Col. Windom: Might I suggest, counsel is not distinguishing between civil and criminal liability.

Mr. Sillman: On the contrary, the degree of proof is so much higher in the criminal case, that if what I have said applies to a civil case it applies three times as strongly to a criminal case.

The Court: Your objection goes to the point in the witness' testimony in which he said that this was the net taxable income?

Mr. Sillman: That is correct, Your Honor.

The Court: Read the testimony.

(The last answer was read.)

The Court: Is not that statement made upon his calculations?

Mr. Sillman: But, the witness himself is characterizing this not as net taxable income but gives the net taxable income of that amount on the basis of a net worth expenditure analysis.

The Court: In accordance with his theory of what the net worth is, as shown by his calculations.

What do you mean by that, Mr. Clager?

The Witness: Well, sir, in order to determine the tax which was charged in the indictment, we have to determine a taxable net income upon which to compute this.

The Court: Was this determination made upon the figures which you have related

The Witness: Yes, sir.

The Court: The objection is overruled.

Q. Give us 1945 now, please.

[fol. 350] A. At the close of 1945 the assets consisted as follows: \$2000 in currency on hand. Five bank accounts as follows: bank account at the Ohio National Bank, High-Town Office, in the name of the Buckeye Tailoring Company, balance \$571.88; account at the First Federal Savings and Loan Association, No. 8070, in the name of D. F. or F. F. Handler, \$854.38; account at the First Federal Savings and Loan Association, Account No. 13980, in the name of A. Wayne or Frances Friedberg, \$1007.50 balance; another savings account, No. 13889, at the First Federal Savings and Loan Association in the name of Elaine or Frances Friedberg, balance \$302.25; savings account 12743 at the Franklin Federal Savings and Loan Association in the name of Frances or David Friedberg, balance at the end of 1945, \$2047.37.

Also listed in the schedule of assets at the close of 1945 were U. S. Savings Bonds, Series E, in a total amount of \$9487.50, U. S. Bonds, Series G and Coupon, in the amount of \$31,000. Merchandise inventory at the Buckeye Tailoring Company, as shown by his income tax return, \$5102. Equipment of the Buckeye Tailoring Company, adjusted for depreciation, amounting to \$360. Household furnishings of \$1500. Unimproved property in O'Shaughnessy Hills, Franklin County, \$200. The total assets for the year 1945, \$54,432.88.

Investigation disclosed no known liabilities at the close of 1945, the note to Nathan Weiss having been paid off during the year.

From this amount of total assets which I just read we have deducted a non taxable gain on securities of \$425.57, which brought his net worth to the total of \$54,007.31. And deducting from this net worth at the end of '45 the net [fol. 351] worth at the end of 1944 of \$34,425.67, I find the increase in net worth during the year 1945 to be \$19,581.64.

To the net worth figure which I have just read we have added personal expenditures made during the year 1945 as follows: Life insurance premiums actually paid during the year, \$652.61; income tax payments made during the

year 1945, \$715.20; rental of residence, personal residence, \$780.00, and other miscellaneous expenditures paid by checks drawn on the High-Town office of the Ohio National Bank, \$439.73, which makes the total personal expenditures for the year 1945 of \$2587.54.

This figure added to the previous figure, increase in net worth, of \$19,581.64 gives a net worth increase and personal living expenditure for the year 1945 of \$22,169.18. We have allowed the standard deduction permitted by law of \$500 to be taken from this figure, which gives us a net income for tax purposes of \$21,669.18.

Mr. Sillman: Now, again, I object to this statement. The witness hasn't even gone far enough to qualify this last net taxable income. He hasn't said net taxable income under the net worth expenditure computation. He just calls it net taxable income. It couldn't possibly be that. I object.

The Court: Overruled.

Q. Will you give us the year 1946, please, Mr. Clager.

A. Assets at the end of the year 1946 consisted of the following items: \$5,000 in currency available to the taxpayer. Five bank accounts as follows: Bank account at the Ohio National Bank, High-Town Office, in the name of the Buckeye Tailoring Company, balance at the end of 1946, [fol. 352] \$1010.74; savings account 8070 at the First Federal Savings and Loan Association in the name of D. F. or F. F. Handler, balance \$5434.23; savings account No. 13980 at the First Federal Savings and Loan Association in the name of A. Wayne or Frances Friedberg, \$1379.77; savings account 13889 at the First Federal Savings and Loan Association in the name of Elaine or Frances Friedberg, balance \$804.50; and savings account 12743 at the Franklin Federal Savings and Loan Association in the name of Frances or David Friedberg, balance \$2088.52.

The other assets are as follows: U. S. Savings Bonds, Series E, total of \$9487.50. U. S. Bonds, Series G and Coupon, \$41,000. Brokerage account at Vercoe and Company, in the name of A. Wayne Friedberg, a credit balance of \$1000 at the end of 1946. Buckeye Tailoring Company merchandise inventory on hand at the end of 1946, according to the income tax returns filed, \$6863.00. Buckeye

Tailoring Company equipment adjusted for depreciation, \$300. Household furnishings \$1500. And, unimproved property in O'Shaughnessy Hills, Franklin County, Ohio, \$200. Total assets on December 31, 1946 of \$76,068.26.

There were no known liabilities found at the end of the year 1946. And deducting the prior net worth at the end of the year 1945 of \$54,432.88, the schedule shows a net worth increase of \$21,635.38. To this increase in net worth of \$21,635.38 during the year 1946, the following items of expenditures have been added: Life insurance premiums during the year \$651.66. We have deducted an item of \$620, which represents the difference between income tax payments made and refunds made by the Government. In other words, he actually received \$620 in that year, refunds [fol. 353] which he had claimed. Rental of personal residence \$780. And other expenses paid by check drawn on the High-Town office of the Ohio National Bank \$474.50. The total personal expenditures included in our schedule for the year 1946 were \$1899.96.

Added to the previously mentioned increase in net worth of \$21,635.38, we arrive at a net worth increase in personal expenditures during the year 1946 of \$23,535.34. From this figure has been deducted the standard deduction permitted by law of \$500, which leaves a net taxable income, based on increase in net worth expenditure method, of \$23,035.34.

Mr. Sillman: May the record show our same objection to this last statement?

The Court: Overruled.

Q. Give us the year 1947, please, Mr. Clager.

A. The assets at the close of the year 1947 consisted as follows: Cash on hand available to the taxpayer \$14,842.36. Five bank accounts as follows: Checking account at the Ohio National Bank, High-Town Office, Columbus, in the name of the Buckeye Tailoring Company, balance \$1123.18. The following savings accounts all at the Dollar Federal Savings and Loan Association, Columbus, Ohio: Savings Account 3280 in the name of Frances F. or David Friedberg \$6000; Savings Account 3303 in the name of David or Frances Friedberg \$6000; Savings Account 3342 in the name of Elaine F. or Frances Friedberg \$1100; Savings

Account 3343 in the name of A. Wayne or Frances Friedberg \$1415.

Other assets are as follows: Stocks or securities owned [fol. 354] by the taxpayer \$4757.54. That item is Delaware and Hudson Bonds, actually. U. S. Bonds, Series E Savings \$9487.50. United States Bonds, Series G and Coupon \$61,000. Inventory, the Buckeye Tailoring Company, as shown by his income tax return filed with the Internal Revenue \$8993.60. Equipment at the Buckeye Tailoring Company, adjusted for depreciation, \$240. Household furnishings \$1500. Unimproved property at O'Shaughnessy Hills, Franklin County, Ohio, \$200. The total assets at the end of 1947, \$116,659.18.

There were no known liabilities. So, the net worth at the close of the year 1947 would be \$116,659.18. And taking from that figure the net worth at the close of the previous year, December 31, 1947, \$76,068.26, the net worth increase for the year 1947 is \$40,590.92.

To this increase for the year 1947 the following personal expenditures were added: Life insurance premiums paid \$302.21. Income tax payments made \$210.00. Rental of personal residence, \$810.00. And other expenses paid by checks drawn on the Buckeye Tailoring Company account at the Ohio National Bank \$863.78. The total of the personal expenditures is \$2185.99. Added to his increase in net worth, as I have mentioned previously, the net worth increase for the year 1947 is \$42,776.91. And from this figure has been deducted the standard deduction allowed by law of \$500, which gives a net income computed on a net worth expenditure basis of \$42,276.91.

Mr. Sillman: May the record show our same objection, Your Honor.

Q. Mr. Clager, in Government's Exhibit 2 and in your [fol. 355] testimony in relation thereto, you have included bank accounts in the names of other persons other than David or Frances Friedberg. Why did you do that?

A. I found during my investigation that when a name of a child, taxpayer's child, Elaine or Wayne Friedberg, was on the bank account, that Mrs. Friedberg was also listed on the bank account, with the exception of the account 12951

at the First Federal Savings and Loan Association. That was in the name of A. Wayne Friedberg, but the following year it was transferred into a joint account of A. Wayne and Mrs. The account in the name of D. F. or F. F. Handler at the First Federal Savings and Loan Association was examined by the Deputy Collector who cooperated with me.

Q. When was the account in the First Federal Savings and Loan in the name of D. F. or F. F. Handler closed, if you know?

A. On July 1, 1947 there was a withdrawal of \$5,474.99 from the account No. 8070 in the name of D. F. or F. F. Handler and a check was drawn for this amount.

Q. What happened to that money?

A. The funds were placed in two accounts at the Dollar Federal Savings and Loan.

Q. In whose name, please?

A. On July 2, 1947 Savings Account 3303 in the name of David or Frances Friedberg, 180 South Third Street, Columbus, Ohio, was opened with a deposit of \$5,000. On the same date Savings Account 3280 in the name of Frances F. or David Friedberg at this same bank was credited with a deposit of \$3500. Included in this deposit were credits of \$474.99, \$2109.41, which investigation discloses came [fol. 356] from the Franklin Federal Savings and Loan, and \$915.20 in cash. I have mentioned that there was a \$5,000 credit to the first account, and the balance of this check was deposited in the other account, of \$474.99.

Q. Let's take, for example, now, the First Federal Savings and Loan Account 13980 in the name of A. Wayne or Frances Friedberg. I notice that that was apparently closed sometime in 1947. What happened to that money?

A. Account 12951 at the First Federal Savings and Loan in the name of—I have to correct that. Account No. 13980 in the name of A. Wayne or Frances Friedberg at the First Federal Savings and Loan was closed on July 10, 1947. On July 11, 1947 Savings Account 3343 in the name of A. Wayne Friedberg or Frances Friedberg was opened at the Dollar Federal Savings and Loan.

Q. Was that money transferred to that new account?

A. That was the same day. I am not absolutely certain, but I believe there is a check in evidence on that from that bank.

Q. Now, First Federal Savings and Loan Account 13889 in the name of Elaine or Frances Friedberg was apparently closed sometime in 1947. What happened to that?

A. On July 10, 1947 examination of the bank account revealed that this account was closed and the balance of \$1097.27 was withdrawn. On July 11, 1947, which was the following day, account No. 3342 at the Dollar Federal Savings and Loan Association was established in the name of Elaine F. or Frances Friedberg, the deposit being \$1100.

Q. I note that Franklin Federal Savings and Loan Account [fol. 357] No. 12743 in the name of Frances or David Friedberg was apparently closed in 1947. What happened to that money?

A. On July 2, 1947 the balance in this account of \$2109.41 was withdrawn from the account and a bank check of the Franklin Federal Savings and Loan to Frances Friedberg dated July 2, 1947, No. F52614 in the amount of \$2109.41 was issued in her order, and endorsements were Dollar Federal Savings and Loan Association and the City National Bank July 3, 1947.

Q. Mr. Clager, when did Mr. Friedberg first have, to your knowledge, a safety deposit box.

A. The first safety deposit box we have located was at the Franklin Federal Savings and Loan Association in the name of Frances or David Friedberg, 131 North Nelson Road. The number was 182. The bank records examined showed that it was opened on December 29, 1930. That was surrendered.

Q. What date, please?

A. December 29, 1930, and was surrendered on March 14, 1935.

Q. What do you mean surrendered?

A. The box was surrendered to the bank.

Q. When was the next time that you found that either of the Friedberg's had a safety deposit box?

A. Record at the Buckeye State Building and Loan Company, now the Buckeye Federal Savings and Loan, revealed that box No. 4694 was issued in the name of F. F. Friedberg

and D. Friedberg, address as shown on the box was 208 South Stanwood Road, Bexley, and 779 Cassingham Road. [fol. 358] This safe deposit box was rented, according to the bank records, on May 2, 1941. The safe deposit records show there were 18 entries during the year 1941, 1943, 1944 and 1945, and that this safe deposit box was surrendered on April 12, 1945.

Q. You said entries during the year—then you gave several years.

A. No. Those 18 entries were during the years I have read off. During the year 1941 there were four entries, none in 1942, there were three entries in 1943, there were five entries during the year 1944 and there were six entries during the year 1945, including the entry when they surrendered the box.

Q. Have you found any other records of safety deposit boxes in either Mr. or Mrs. Friedberg's name?

A. No, sir.

Q. When was the box in the name of D. F. or F. F. Handler opened, do you know?

A. Examination of the safe deposit records at the Market Exchange Bank in Columbus revealed that box 1293 was rented to David Handler and Frances F. Handler on February 6, 1945.

Q. How long did they retain that box, please?

A. I made a transcript of this entry box card on December 16, 1947. It was still in their name at that time.

Q. What number of entries were there into that box for each year, please?

A. For the year 1945 there were 27 entries.

Q. How many for 1946?

[fol. 359] A. For the year 1946 there were 22 entries.

Q. How many for '47?

A. For the year 1947 there were 13 entries up until the date I examined the box.

Q. Mr. Clager, were you able to find any evidence or record of Mr. and Mrs. Friedberg having a safety deposit box between March 14, 1935 and May 2, 1941?

A. I was not.

Q. Mr. Clager, I will ask you whether or not the defend-

ant David Friedberg reported any interest income on his income tax returns for the years '44, '45 and '46?

A. My examination of the original income tax returns filed revealed no interest income reported on these returns.

Q. I will ask whether or not your investigation shows that he did in fact have an interest income in those years?

A. My investigation did disclose that there was interest income.

Q. What was that interest from?

A. It was from two sources: savings accounts which I have enumerated here and interest received from Government bonds.

Col. Windom: Your Honor, might we take a ten-minute recess?

The Court: Ladies and gentlemen of the jury, the Court intends to recess for ten minutes. You must follow the instructions heretofore given you.

(A brief recess was taken.)

[fol. 360] The Court: Is there any dispute between counsel as to the identity of the account in the name of Handler?

Col. Windom: I believe not.

Mr. Sillman: I believe not.

Col. Windom: It is stipulated, is it not, that the account in the name of D. F. and F. F. Handler is in fact Mr. and Mrs. Friedberg's account?

Mr. Sillman: Oh, no question about that.

FRANCIS J. CLAGER, resuming the stand, testified further as follows:

Direct examination (Cont'd.).

By Col. Windom:

Q. Mr. Clager, Government's Exhibit No. 2 shows in the year 1943 bank accounts, one in the Ohio National Bank, being the Buckeye Tailoring Company account, \$635.34, Park Federal Savings and Loan, in the name Frances F. or David Friedberg, \$874.41, a third account in the First Fed-

eral Savings and Loan in the name of D. F. or F. F. Handler, \$4,133.94. I will ask you whether or not you conducted an investigation to determine the source of deposits in account 8070?

A. I have.

Q. Will you tell us what your investigation disclosed, please?

A. My investigation disclosed that the initial deposit to this account 8070 in the name of D. F. or F. F. Handler was made on June 24, 1939 in the amount of \$1,726.34, and that this deposit consisted of three checks, one from a G. G. Segal for \$57.22, a check from the National Life Insurance [fol. 361] Company of Vermont in the amount of \$709.30, and a check from J. C. Robins for \$889.82.

The next deposit in this account occurred on July 12, 1939 in the amount of \$609.08.

Mr. Sillman: If the Court please, I am objecting. Is there any relevancy to these prior year deposits? The figures are there.

Col. Windom: I think there is.

Mr. Sillman: I am objecting.

The Court: Overruled.

Col. Windom: Establishing firmly that our starting point is correct.

A. The deposit on July 12, 1939 of \$609.08 consisted of a check in the amount of \$609 from the Franklin Federal Savings and Loan, check No. F17676, and a deposit of 8 cents in currency, which brought the balance of the account to \$2,336.00 even.

The next deposit in this account occurred on November 13, 1939 in the amount of \$700.42. Records examined revealed that this deposit consisted of a check from the National Life Insurance Company of Vermont.

The next deposit in this account occurred on September 24, 1940 in the amount of \$1,000. An analysis of the deposit revealed that it consisted of a check for \$500 from George Zimmerman drawn on bank account 1-127, and a second check of \$500 issued by George Zimmerman drawn on bank account 1-127.

The next deposit to this account occurred on March 6, 1941 in the amount of \$1359.21. Examination revealed that this check was drawn by a Ben Zuckerman and [fol. 362] involved the settlement in the sale of Mr. Friedberg's home at 208 South Stanwood Road.

The next deposit to this account occurred on July 16, 1941 in the amount of \$1030.00. Investigation has revealed and it has been stipulated that the check was issued by Joseph Zei Friedberg, Mr. David Friedberg's brother, and was issued for purposes of settling Mr. Friedberg's mother's estate.

The next deposit to this account occurred on January 29, 1942 in the amount of \$600, and the deposit of \$600 consisted of one check issued by the Park Federal Savings and Loan, Columbus, Ohio. The check was numbered 66239 dated January 29, 1942, made payable to D. F. Friedberg and was endorsed D. F. Friedberg, F. F. Handler, and the First Federal Savings and Loan Association.

The next deposit to this account on March 11, 1942 consisted of \$241.06. The deposit ticket reveals the following. There was a \$250 deposit and from this deposit \$8.94 was taken and the balance of \$241.06 was placed in the account. My testimony previously made was that there was a withdrawal, as shown by the taxpayer's records on this date, of \$250 from this business.

The next deposit to this account occurred on April 13, 1942 in the amount of \$100, and my testimony previously was to the effect that there was a withdrawal, as shown by the taxpayer's books, from his company in the amount of \$100.

The next deposit occurred on June 25, 1942 in the amount of \$200. It consisted of \$84.50 in check and \$115.50 [fol. 363] unidentified as to what it was. I was not able to trace from the bank records the origin of this \$200. I did not know who issued the check.

The next deposit occurring in this account was on April 12, 1943 in the amount of \$150, and my testimony previously was that on this date—

Mr. Sillman: If the Court please, is the witness going to be permitted to repeat his testimony?

The Court: There is no necessity of that.

Mr. Sillman: We have been over this several times

A. On April 12, 1943 there was a deposit of \$150. On May 15, 1943 a deposit of \$100. June 11, 1943 a deposit of \$100. These funds, according to my investigation, arose from the business as shown by the taxpayer's records.

Mr. Sillman: Now, if the Court please, I object to that as a flagrant conclusion, a pure conclusion. It is a repayment of loans but he doesn't tell the jury that. I object to that conclusion on his part unless he states what it is. It sounds like income. That's not fair.

The Court: If the Court understood the question correctly, the District Attorney asked him if he investigated the source of these deposits. The Court understands the witness to be relating the result of his investigation as to the source of these deposits.

Mr. Sillman: What I am objecting to, Your Honor, is this. This witness knows that the figures he just testified to are figures he previously testified to as repayments of loans, and he answered, he concludes, that this money came from the business, leaving the inference for the jury that [fol. 364] it was income. Now, if he wants to—

The Court: Just a moment. Let's read his answer and see what it says.

(The last answer was read.)

Mr. Sillman: "... arose from the records."

The Court: "... as shown by the records." Your objection is overruled.

Q. Mr. Clager, will you clarify that point and tell us what you found?

A. If I have left the impression with the jury—

Q. Just tell us what you found.

A. Will you please repeat the question.

Q. You have given the answer, if I understand correctly, that your investigation showed that these entries came from the business. Tell us what you mean.

A. By that I mean that on the day these deposits were made, as shown by the page ledger sheet, there were cor-

responding disbursements from the taxpayer's books, as shown by his books.

The Court: What do you mean by disbursements?

The Witness: Any withdrawal of funds was a disbursement. I can clarify that by saying that it was indicated on the books, from my examination, that they were repayments on loans.

Q. Go ahead.

A. There were also the following deposits during the balance of 1943 in this account 8070: July 16, 1943 \$200; October 13, 1943, \$100; November 12, 1943, \$103.75.

[fol. 365] As shown by a summary sheet included in the taxpayer's records for the year 1943, in which he summarizes his disbursements, on the summary sheet he had a column entitled loans, the repayment of loans, and on the same months in which these deposits were made there were entries showing repayment of loans in the same amount as reflected in the deposits in this account.

Q. Does that complete the year 1943, Mr. Clager?

A. It does.

Q. Will you give us the year 1944, please?

A. The next deposit occurred on June 2, 1944 in the amount of \$2008. The taxpayer's cancelled checks were not available for the year 1944, from my investigation, but a review of his ledger sheet at the Ohio National Bank for the checking account revealed that on June 5, 1944 there was charged to his account an amount of \$2008.

During the year 1945—

Q. Just go through '44. Is that the last entry in '44?

A. Yes, sir.

Col. Windom: You may cross examine.

Cross examination.

By Mr. Sillman:

Q. How old are you, Mr. Clager?

A. I am 34 years of age.

Q. And, you are now in what capacity in the Department? [fol. 366] A. I have the title of Special Agent, Intelligence Division, Bureau of Internal Revenue.

Q. How long have you been employed by the Internal Revenue Bureau?

A. I started my employment on February 4, 1946.

Q. And, you started this investigation on what date? Was it November '47?

A. It was November 1947.

Q. Had you ever worked for the Department before?

A. I did not work for the Bureau of Internal Revenue.

Q. Is that your answer.

A. It is not my full answer.

Q. Well, did you work for the Bureau of Internal Revenue before February 4, 1946?

A. No, sir.

Q. What is the answer?

A. No, sir.

Q. So that you were in the Bureau for approximately a year, a year and a half, a little less than that, at the time you undertook this investigation?

A. That's what I have testified to.

Q. Well, that's what I am asking you. That is a fact, you had a year, a year and a half's experience?

A. From February 4, 1946.

Q. What accounting or other schooling of that kind have you had?

[fols. 367-368] A. I graduated from Ohio State University in June of 1940 and I had approximately 45 hours, credit hours in accounting.

Q. You mean you studied some accounting up at school?

A. I have credit for 45 hours, academic credit hours, at Ohio State University.

Q. Did you study some accounting at school?

A. Yes, sir. Do you want me to tell you the courses?

A. I asked you whether you studied some accounting. When I want to ask you something it won't be necessary for you to ask me if I want to ask you. I will ask you all the questions I want to. You won't have to prompt me, you can save yourself that privilege.

Are you a certified public accountant?

A. I am not.

[fol. 369] Q. Now, if you omitted any figures in the net

worth computation, the entire statement is inaccurate, is it not?

A. It would be inaccurate.

Q. You gave no credit to the defendant for any cash in the year of 1941, did you, Mr. Clager?

A. The evidence——

Q. I asked you whether you did or didn't in your statement. That can be answered yes or no.

The Court: You may answer and then explain, if you desire, Mr. Clager.

Q. Let me rephrase my question. Maybe that will make it clearer to you. You can open up the net worth statement, Government's Exhibit 2, and I am holding a copy before me. Do you have it?

A. I do have a copy here.

Q. On your statement, the statement you prepared, did you or did you not give the defendant credit with any cash at the end of 1941?

A. There was no evidence available to show there was cash.

Q. That's not my question. I am asking you a simple question. Did you or didn't you?

A. I am an accountant.

Q. I see two zero figures and I am asking you to answer.

The Court: You may answer the question and explain your answer if you so desire. Counsel is asking you whether you did or did not. You may answer that question and explain your answer if you want to.

[fol. 370] A. Well, sir, I read off all the figures on my report, and he obviously knows as well as I do, and I think the jury does——

The Court: Just a moment. If you can, answer the question. Do you understand the question, Mr. Clager?

The Witness: I do understand the question.

The Court: You may answer the question. Read the question.

(The last question was read.)

A. Based on evidence I did not include the item of currency on hand on December 31, 1941, and for the following reasons, if I may finish my answer.

Mr. Sillman: If the Court please—

The Court: Yes, he may explain. He says he did not. He may explain his answer.

Mr. Sillman: You mean why he did not?

The Court: The witness may explain his answer. He has answered he did not.

Mr. Sillman: I thought that I was cross examining the witness.

The Court: The Court intends to give you the widest possible latitude consistent with the rules.

A. My investigation disclosed, and I made it as thoroughly as I could, that Mr. Friedberg had borrowed funds from his insurance policy in 1931 and it was not paid until 1935. My investigation disclosed further that—

Mr. Sillman: If the Court please, I am entering a serious [fol. 371] objection.

The Court: I think you can explain more briefly why you did not show cash.

Mr. Sillman: I am not interested in what he has concluded. I want to know what the facts are.

A. Well, briefly, we found that Mr. Friedberg had secured a Home Owners Loan Corporation mortgage in 1943—

Mr. Sillman: I am prepared to make a motion if the witness proceeds.

The Court: Mr. Clager, you have answered the question that you did not. Now, you may explain your answer if you so desire.

A. I did not include currency at the end of the year 1941 because my investigation disclosed no evidence which would permit me to put such a figure of currency in my schedule.

Mr. Sillman: Now, if the Court please, I am going to move that the conclusion on the part of the witness be stricken.

The Court: Overruled.

By Mr. Sillman:

Q. Now, going to the year of 1942, December 31, in the top column, which is Cash, do I correctly read zero?

A. You do.

Q. So that you did not give the defendant any credit for any cash at the end of '42, did you?

A. Based on the evidence, I did not.

Q. Well, you mean based on your conclusion, don't you, [fol. 372] Mr. Clager?

A. Of the evidence I found.

Q. Well, were you in his box in 1941?

A. No, sir.

Q. Were you in his home in 1941?

A. ~~No~~.

Q. Are you telling this jury, Mr. Clager, that you have personal knowledge of whether Mr. Friedberg did or did not have cash in his safe deposit box in the year of 1941?

Col. Windom: I object to that question because it assumes something not in the record.

Mr. Sillman: It certainly will be in the record, and I am testing his credibility.

The Court: Yes, the witness may answer if he knows.

Q. Now, I am asking if you are telling this jury that Mr. Friedberg did not have any cash in his safe deposit box in the year of 1941?

A. From the facts of my investigation I found no evidence of cash.

Q. What did you do in 1941 or any other time to find evidence of cash? You found the box, didn't you?

A. I found three boxes to have been rented at one time or another.

Q. I want you to explain to this jury how you can tell the jury whether Mr. Friedberg did or did not have cash in his box in 1941 or 1942 or 1943 or 1944 or 1945, so far as that's concerned? You weren't there, were you, Mr. Clager?

A. At the end of 1945?

[fol. 373] Q. I am talking about '41, first.

The Court: You have put them all in one question. If

you are going to separate your question, you should do so. You have a complex, compound question.

Q. Let me simplify it in this fashion. You did not investigate Mr. Friedberg's box in 1941, did you?

A. In the year 1941 I made no investigation.

Q. You and nobody else went to his private safe deposit box in that year, did you?

A. I don't know who else may have.

Q. You don't know of anybody that ever went there?

A. I have no personal knowledge.

Q. So, if you didn't go to his box in 1941, you couldn't tell whether there was or wasn't anything in that box, could you, Mr. Clager?

A. I wasn't there.

Q. Well, I am asking you to tell the jury if you didn't go to the box in 1941 whether you have any personal knowledge of whether there was or was not anything in the box?

A. I did not examine his box, so therefore I had no personal knowledge.

Q. Now, you didn't go to Mr. Friedberg's home in the year of 1941 or examine any places at home that he might have kept money. You have no personal knowledge of that, do you, Mr. Clager?

A. I have no personal knowledge.

Q. In the year of 1942, you have no personal knowledge [fol. 374] whether Mr. Friedberg did or did not have cash in the safe deposit box or at home?

A. Only the evidence which has come before me in my investigation.

Q. The evidence that you are talking about, after all, Mr. Clager, is your conclusion, isn't it? That is your conclusion, isn't it?

A. Based on the evidence.

Q. You have drawn certain inferences, haven't you?

A. Based on the evidence available during the investigation.

Q. You actually have no personal knowledge whether Mr. Friedberg did or did not have cash in 1942, do you?

A. Only the evidence, sir.

Q. Now, that's not an answer to my question.

Mr. Sillman: If the Court please, I ask him to answer the question.

The Court: Read the question.

(The last question was read.)

The Court: Do you understand the question.

fact that suburban areas are frequently themselves cities

There are many cases which recognize this very fact that

The Witness: I understand it, sir.

The Court: You may answer the question.

A. I never saw any currency at that time.

Q. Do you or don't you have personal knowledge? I know you didn't see any currency, Mr. Clager.

A. Therefore, I would not have personal knowledge since I could not testify to something I hadn't seen.

Q. You do not have personal knowledge whether Mr. Friedberg did or did not have cash in the safe deposit box or at home at the end of 1943, do you?

[fol. 375] A. No, only the evidence.

Q. That is not an answer to my question.

A. I did not examine his box at December of 1943.

Q. You have already told us. I am asking you whether you have personal knowledge whether Mr. Friedberg did or did not have cash?

A. No, I do not have absolute knowledge on it.

Q. Now, at the end of the year '44 do you have personal knowledge of whether Mr. Friedberg did or did not have cash; Mr. or Mrs. Friedberg? Is your answer any different for that year?

A. I would see no reason for it being different.

Q. So, you have no personal knowledge for that year?

A. I have no personal knowledge except what evidence I have.

Q. And, you have no personal knowledge of whether Mr. and Mrs. Friedberg, or both, had cash in any particular sum at the end of 1945, do you, in addition to \$2,000 that's included in your statement?

A. In addition?

Q. Yes.

A. No.

Q. Do you have personal knowledge whether they did or didn't?

A. No, I have no personal knowledge.

Q. Do you have personal knowledge of whether they had additional cash over and above the amount that you had given credit for in '46? Do you have personal knowledge for that?

A. I have no personal knowledge.

[fol. 376] Q. Do you have personal knowledge of whether they had additional cash at the end of '47 over and above the figure stated in your net worth statement?

A. I have no personal knowledge.

Q. Now, Mr. Clager, I would like to illustrate to the jury an error in this net worth statement. You don't claim it is free from error, do you?

A. It is free from basic error.

Q. Well, then, it is not free from unbasic errors, is it? Is there or isn't there an error?

A. We have found an error.

Q. That's all I was asking you. What year was that '42 Mr. Clager—'44, I am sorry.

A. The transcript as made of savings account 98575.

Q. What's the number, please?

A. I was incorrect. It is 70855.

Q. That's the Buckeye State Building and Loan Company account?

A. That's correct.

Q. And, that's in the name of Frances F. or David Friedberg?

A. Correct.

Q. And, in your net worth statement you have got a figure of how much?

A. \$3475.03.

Q. \$3475.03, correct?

A. That is the amount of my statement.

Q. Now, you got that figure from the Buckeye Bank didn't you?

[fol. 377] A. The transcript was made by the Deputy.

Q. You got that figure from a Deputy Collector?

A. Yes, sir.

Q. Who told you he made a transcript from the bank?

A. Yes, sir.

Q. You weren't present when any transcript was made?

A. I was not present.

Q. And then later on you found out that there was an error of \$250, is that right?

A. I found out there was a deposit on January 5, 1945 which was recorded in sequence prior to an interest credit for the year 1944.

Q. Now, Mr. Clager, the amount of that was \$250?

A. That is correct.

Q. Now, translating that into language that I can understand, that means that was an error of \$250, doesn't it?

A. It was a misinterpretation, I would say, of the account.

Q. We are going to find out whether this was an error or if this wasn't an error, if the witness wants to quibble. You have got a figure on your net worth statement of \$3475.03. If you won't admit that that was an error, tell the jury what the correct figure should be. Just \$250 less, isn't it?

The Court: We have a question pending. Let the witness answer before giving him another one.

Mr. Sillman: It seems so simple to me, Your Honor.

A. May I ask a question? May I be permitted to refer to [fol. 378] the original documents which is presented into evidence?

Q. Why certainly. We just want to know whether that figure is right or wrong. You refer to anything you want to. You say that's right or wrong. Take as much time as you want to. We want to know whether there is an error.

Col. Windom: We object to that dissertation.

The Court: Yes, Mr. Siliman, after you have propounded your question we don't want a speech. You can argue that to the jury at the proper time.

A. The ledger card shows that the balance in the account on January 4 of 1945, after credit of \$250 to the account, that that balance is \$3475.03.

Q. As of what date, please?

A. That's on January 5, 1945.

Q. Then is the figure of \$3475.03 as of December 31, 1945 right or wrong, in your net worth statement?

A. The correct figure should be \$3225.03.

Q. Is \$3225.03 \$250 less than the figure you got in your net worth statement?

A. The amount I have in my net worth statement was \$3475.03 and the balance I should have shown in that statement was \$3225.03.

Q. Can't you answer my question, Mr. Clager? Why don't you want to answer my question?

Mr. Sillman: I think I have a right to ask that now, Your Honor.

[fol. 379] The Court: The Court is of the opinion the witness has answered. He has given the amount which ought to have been shown. You are asking for a mathematical calculation.

Mr. Sillman: I thought, Your Honor, I asked from the beginning if there is a \$250 error, and that's what it is.

The Court: Has the witness made the subtraction? If you want him to do it, the Court will order him to do it.

Q. Suppose, Mr. Clager, you tell us how much difference there is in dollars between the figure that you have in your net worth statement and the correct figure that should have been in there.

A. There is a difference of \$250.

Q. Now, that's the question I asked when we first started, didn't I? Are you willing now to admit, Mr. Clager, that there is an error of \$250 in your net worth statement?

Col. Windom: I object.

Mr. Sillman: He denied it before.

Col. Windom: I object.

The Court: I don't think he designated it as an error. He may tell what it is, if he knows. He made the statement.

A. The correct balance in this particular account we are discussing should have been \$3225.03. Through an error we included an amount of \$3475.03, which is \$250 overstated.

Q. That's where we started. Through an error. Now, it wasn't your mistake, was it?

A. I won't shift the blame to anybody. I am in charge of [fol. 380] the investigation.

Q. I said, it wasn't your mistake, was it?

A. At this time I believe it was not my mistake.

Q. I don't think it was either. Whose mistake was it—the bank's?

A. It wouldn't be the bank's mistake because the bank didn't make a transcript of this account.

Q. You feel the bank did give you the correct figures, Mr. Clager?

A. I can't testify to that because I didn't make the transcript. I wasn't there.

Q. Well, it is not a serious thing, but it shows that there can be an error even in your net worth statement. It shows this error that occurred, \$250.

Q. Now, then, as a result of that simple, innocent error, Mr. Clager, of \$250, are the balance of the figures for the year 1944; that is to say, the total assets, is that a correct figure or incorrect?

A. As a result of that small error in the account of \$250 the total assets available to taxpayer would have been overstated in the amount of \$250.

Q. Overstated by whom?

A. Would you please explain further.

Q. Who did the overstating, you or the taxpayer, when you said would have been overstated?

A. Well, I would be responsible.

Q. You would what?

A. I would be responsible for that.

[fol. 381] Q. Let's just boil that down, Mr. Clager. What you mean, don't you, is that the net worth figure that you have on this statement is not correct to the extent of that error which I have characterized as a simple, innocent error; that's correct, isn't it?

A. Based on the computations I made it would be an error of \$250.

Q. And the net worth increase here would be off, too, wouldn't it?

A. It would be off \$250.

Q. And, all of the figures for the year of 1945; that is,

the net worth increases for 1945 would be off, wouldn't they, Mr. Clager?

A. The balance in that account at the end of '45, of course, was closed out.

Q. Well, would the net worth increase that you show in this paper that you got up, would that be correct for 1945, in the face of that \$250 error? Would it or would it not be correct?

A. The net result would be the 1944 year would be overstated \$250; in 1945 it would be understated \$250. It would compensate itself.

Q. Now, when you are talking about overstated and understated, you are talking about the statements that you make in this net worth computation?

A. I beg your pardon?

Q. You are talking about your figures in your net worth computation, aren't you?

A. We are discussing this statement, yes, sir.

Q. That's what I thought. Now, the figures for '46 would be incorrect, wouldn't they?

[fol. 382] A. They would not have any affect.

Q. The net worth increase?

A. No. Oh, it would affect the figures but it would not affect the total.

Q. How about '47?

A. It would be the same. There would be no affect on the total net income which we are discussing in this statement.

Q. But the net worth increases for '44 and '45 would definitely be wrong, wouldn't they?

A. Yes, '44 would be overstated and '45 understated.

Q. Now, Mr. Clager, if at the end of December 31, 1942, instead of Mr. Friedberg and Mrs. Friedberg having no cash, if they had substantial cash at that period, then by the same illustration that *they* we have given with this error we just discussed, the entire net worth figures would be off, wouldn't they?

A. I don't think I can answer an assumption, sir.

Q. You can't answer an assumption? We will try it.

Col. Windom: What is the question?

Mr. Sillman: The question is that if Mr. and Mrs. Friedberg had substantial cash at the end of '41, would this net worth statement be correct or incorrect?

Col. Windom: I object to the question. It is assuming something not shown in the record.

The Court: Is there anything in the record upon which to make that assumption?

[fol. 383] Mr. Sillman: It is a test question and, of course, our evidence will come in in the proper order. We are cross examining.

The Court: Have you anything in the record upon which to base that assumption in your question?

Mr. Sillman: We haven't presented our case yet.

The Court: Have you any right to assume, in asking a question, something which is not shown in the record? The Court is not foreclosing you at the proper time.

Mr. Sillman: We will have to call him back.

The Court: You may have to do that.

Do you understand the question?

The Witness: I would like it repeated now that it's been discussed.

Q. I am just asking you that if instead of zero cash at the end of '41, which you have marked on this statement, if in fact there was substantial cash, would not the entire net worth computation be in error?

Col. Windom: Object to the question.

The Court: He may answer.

A. The only currency on which I could base anything would be on that found in the box.

Mr. Sillman: That's not the answer to my question. He can answer the question.

The Court: I doubt the propriety of the question, Mr. Sillman, at this time. There is nothing here to show that they did have a substantial sum of cash. It might be [fol. 384] misleading to the jury. At the proper time the Court will not prohibit you from asking such a question of this witness or any other witness. At this time the Court will have to sustain the objection.

Q. Now, Mr. Clager, did you make any investigation of financial transactions by Mr. Friedberg prior to 1944, such as real estate transactions?

A. I did.

Q. Did Mr. Friedberg have extensive real estate transactions prior to 1944 and particularly in the early 1920's and in the 1930's?

A. My examination of the courthouse records regarding real estate revealed that he acquired and disposed of several properties.

Q. Did you give Mr. and Mrs. Friedberg credit for any cash arising from such transactions? You either did or didn't.

A. I was unable to determine the amount of cash which would arise.

Q. What books and records did you examine in your audit, Mr. Clager?

A. Mr. Friedberg made available to me——

Q. My question to you is what books and records did you examine in your audit.

A. I would like to answer.

Q. Well, just tell me.

A. Mr. Friedberg made available to me and I examined a—retail sales summary sheets—I believe he referred to them as an order book, starting with the date of January 19, 1942 and carrying through until the end of 1947.

[fol. 385] Q. Yes?

A. Mr. Friedberg made available to me and I examined duplicate sales invoices for his wholesale operations for the years, only, of 1945, 1946 and 1947. Also the cash receipts books.

Q. Who made that available to you?

A. He did make it available to me. I examined the cash receipts books—there were several of them—covering the period July 25, 1942 through and including December 24, 1947. He also made available to me and I examined a set of records for the year 1941 and 1942 which consisted of a sales journal, cash receipts journal, purchases journal, cash disbursements and general journal. It was all in one binder for each year. Also he made available and I examined cancelled checks for the checking account at the

Ohio National Bank in the name of the Buckeye Tailoring Company and the monthly bank statements for the years only of 1945, 1946 and 1947.

Q. Is that all?

A. There were miscellaneous records also made available to me.

Q. Now you came into this investigation in November of 1947, didn't you, Mr. Clager?

A. Yes.

Q. You have answered that before. Do you have to go through all those papers to find that out? Did you or didn't you?

A. I can give you the exact date. It was November 1947.

Q. Now, the investigation had already been under way, hadn't it, Mr. Clager?

[fol. 386] A. It had been referred to me, yes.

Q. The investigation had been started by Mr. Curtis and Mr. Nerny, hadn't it?

A. I have no personal knowledge of that.

Q. Now, you don't have personal knowledge?

A. I wasn't present.

Q. You don't know anything about that, do you?

A. Not prior to when I entered the investigation.

Q. You don't know anything about Mr. Nerny making an investigation and Mr. Curtis?

A. Mr. Nerny did assist and cooperate with me during my investigation.

Q. Do you know anything about Mr. Nerny making an investigation, and Mr. Curtis, in October of 1947?

A. I beg your pardon, I don't understand your question.

Q. Do you know whether Mr. Nerny and Mr. Curtis started the investigation in October of 1947?

[fol. 387] A. I was given a letter dated November 4, 1947 which was signed by P. G. Curtis and T. J. Nerny in which they outlined to me facts which they had uncovered in regard to their investigation.

Q. You don't know whether they did or did not start in October of 1947, Mr. Clager?

A. I have no knowledge, but I assume that.

Q. Isn't it a fact, Mr. Clager, that the books and records

of Mr. Friedberg were turned over to Mr. Curtis prior to the time you came into the case?

A. I don't know about that, sir.

Q. Well, where did you get the books from? Did you get the books from Mr. Friedberg or did you get them from somebody connected with the Department, Curtis, Nerny, or—

A. My recollection is that Mr. Friedberg delivered them to my office the following day after I talked to him. That would be November 26—or October—

[fol. 388] Q. Now, wait a minute, you weren't in the case then.

A. It would be November 26. I talked to Mr. Friedberg for the first time on November 25. It was the following day.

Q. You have no recollection of having obtained those records from Mr. Curtis or Mr. Nerny or somebody else in the Department?

A. No, sir.

Q. You are not denying that you did receive them from them, are you, Mr. Clager?

A. I have no knowledge on it, sir.

Q. And, you are not claiming that Mr. Friedberg delivered the records to you the following day in November?

A. He left them in the office. As I recall, I wasn't present in the office and they were there when I arrived.

Q. Are you talking about some record for 1947?

A. No, I wouldn't be talking about those because we didn't include the year 1947 until a later date because we were actually in the year '47 at that time.

Q. Well, isn't it a fact, Mr. Clager, that you were not in the year of 1947 at the time?

A. Well, we started the investigation—November 25 is the date I first interviewed Mr. Friedberg, November 25 of '47. So naturally, we couldn't examine the return which had not been filed. It was a later date we included the year 1947.

Q. Isn't it a fact, Mr. Curtis received the books from Mr. Friedberg, Mr. Friedberg gave them to him, and that [fols. 389-390] you got Mr. Friedberg's books and records

from either Mr. Curtis or Mr. Nerny or from somebody in the Department, that somebody delivered them to you?

A. It is my recollection that they were delivered to the office, the books that I requested of Mr. Friedberg.

[fol. 391] Q. Now, you then took over these records that were delivered to your office, as you say, by someone. How long did you keep those records in your possession?

A. Well, "I can't—

Q. Just approximately.

A. It was time enough to do some audit work on them.

Q. I wonder if you can give us just an approximate idea. Did you keep them for a couple week-, a couple months?

A. Well, I have a note here that Mr. Friedberg had written on December 1, 1947. It said, "Mr. Clager, kindly let bearer have cash book and accounts receivable." Mr. Friedberg and I have received from Mr. Clager." And it is signed W. Friedberg. And at that time I sent, if not all, partially.

Q. You turned over the cash journal?

A. Yes, at that time, on December 1. And it was returned later to me.

Q. Returned back to you?

A. Yes, when he was through with it.

[fol. 392] Q. Now, that cash journal you are talking about started in 1944?

A. No, it actually started in 1942.

Q. The cash journal?

A. Yes, sir, July of 1942.

Q. The cash journal that was current in 1947 went back to '44, did it not, Mr. Clager?

A. I couldn't tell you. It could be that way. I don't have them before me and I just don't have a recollection.

Q. I appreciate that. Just to refresh your recollection, would you say that the bound volume cash receipts journal went back to November 1944? Does that refresh your recollection?

A. I believe that's right, started in November '44. There were others before that, three or four, if I recall.

Q. And this one journal?

A. Started in '44. I believe that's correct.

Q. And, this one journal continued on through '47?

A. I believe it did.

Q. So that, the point I am making, Mr. Clager, is that that journal which Mr. Friedberg requested from you was the one in which he was currently, day by day, making his entries?

A. That's right, if it goes through '47.

Q. Then, of course, when you had it or anyone else in the Department had it in some office here, he couldn't make any entries in there?

A. That's correct.

[fol. 393] Q. And then you say you delivered that back to him, and I presume that when it was delivered back to you they had made the intervening entries?

A. I couldn't tell you now.

Q. Well, at any rate, they got it?

A. At that time I wasn't checking '47.

Q. At any rate, they got the book from you. That was their current, day by day, book, and then they returned it to you, so you got it the second time?

A. That's correct.

Q. When were these records finally returned to Mr. Friedberg, all of these records? Just approximately, Mr. Clager.

A. Without some recollection it is difficult for me to call off dates to you. I returned the records, I will say, to Mr. Henry Weiss, Mr. Friedberg's accountant, who was in the process of checking the books for 1947.

Q. He was making an audit, wasn't he?

A. He was working on them. He told me that, at least. I have receipts here which would give me the date. I returned receipts in June of 1948 to Mr. Weiss and he gave me a receipt, and I also returned some receipts.

Q. You mean books?

A. Yes, some books, at an earlier period. Unfortunately it doesn't have a date on the receipt.

Q. What is the last date that you have?

[fol. 394] A. Well, the other receipt is just dated June. Apparently when I prepared it I didn't know exactly what day.

Q. What year?

A. 1948.

Q. So that it is probable, I take it, that these records

were in the possession of the Department or somebody connected with the Department from October or November '47 to possibly around June of '48?

A. Yes, sir.

Q. In each instance when you gave a record to Mr. Freidberg did you take a receipt from him?

A. Not in each instance, no, sir.

Q. When you turned the cash journal of '44, '45, '46 and '47 over to Mr. Friedberg, did you take a receipt from him?

A. I have no receipt here, so I assume I didn't.

Q. When you turned the record over to Mr. Weiss, you did—

A. Yes, because I was turning over everything I had at that time.

Q. You did take a receipt?

A. I did at that time and I was giving it to a third party.

Q. Now, the purpose of that receipt was to itemize in detail the various books and records that you were turning over to Mr. Weiss?

A. Yes, so it would be a matter of record.

Q. So it would be a matter of record to know what records he got from you, and conversely, what records you turned over to him?

A. Yes, sir.

Q. Now, when Mr. Curtis, Mr. Nerny, or whoever, if [fol. 395] you don't know, got the books and records from Mr. Friedberg, did they give him a receipt?

A. I would have no knowledge about that.

Q. Are those receipts and matters of that kind filed in one file?

A. Well, any receipts which I gave or received, I would have them in my file.

Q. Now, if Mr. Curtis or Mr. Nerny gave a receipt, would they have a separate file, or does—

A. Anything they did before I was in the investigation, of course, I don't have those papers. Mr. Nerny would have them.

Q. Would they turn over to you a receipt if they had taken one?

A. Not necessarily, no.

Q. They would still retain it?

A. Yes, I wouldn't ask for their receipt.

Q. You have no knowledge, then, whether either Mr. Curtis or Mr. Nerny ever gave Mr. Friedberg a receipt for the books and records they took from him?

A. That is correct.

Q. Now, you have testified that you examined the books and records of the defendant for the years involved, which are '44, '45, '46 and '47?

A. Yes, sir.

Q. Did you also examine the income tax work sheets which Mr. Friedberg prepared for his accountant, Mr. Weiss, for these years?

A. I am not sure of that now, sir.

[fol. 396] Q. You know what I am talking about, don't you?

A. I am assuming you mean—whatever data he used to prepare his tax return.

Q. I am talking about those papers which were introduced in evidence and referred to as Mr. Friedberg's income tax.

A. Those were Mr. Weiss' work papers.

Q. I am talking about Mr. Friedberg's.

A. Those were obtained from Mr. Weiss.

Q. Mr. Clager, I am handing you Government's Exhibit 3 (a), (b) (c) and (d), and I am calling particular attention to the papers which have been described as the income tax work sheets such as the one I hand you. Did you examine those work sheets?

A. I did.

Q. Now, those income tax work sheets were the same ones that Mr. Friedberg prepared for Mr. Weiss so that Mr. Weiss could make out the income tax returns for the years involved?

A. That was my understanding, that they were Mr. Friedberg's papers which he had turned over to the accountant.

[fol. 397] Q. Did you make an examination of the bank account, the checking account, of Buckeye Tailoring?

A. I did.

Q. Did you make a comparison of the total deposits with the gross income shown on the income tax work sheets?

A. I did.

Q. And, did they compare favorably?

A. They did.

Q. In the cash receipts journal starting in the year of 1945 and for the years '46 and '47, you testified to a great number of entries which were D. Friedberg Loan or Friedberg Loan or some similar caption.

A. Yes, sir.

Q. Now, I want you to tell the jury whether those entries in the book represented loans or whether that was a misnomer and represented miscellaneous income?

Col. Windom: I object to the question.

The Court: If he knows he may answer. Overruled.

A. In comparing the entries marked Loan—D. Friedberg, whatever the amount would appear in a particular day, and in comparing the deposit tickets supporting that day's receipts, I would say that the Loan—D. Friedberg was a misnomer. It did not seem to establish itself as a loan from the record.

Q. And, in fact, Mr. Clager, while it is designated D. Friedberg Loan in the book, it actually was treated by the taxpayer as income, was it not?

[fol. 398] A. I don't know. Mr. Friedberg told me that the Loan—D. Friedberg were loans which he had made to the business, and I had no other—

Q. I am now asking you, on the basis of your audit, on the basis of your examination, can you tell this jury whether the items designated D. Friedberg Loan went into income?

A. They went into the bank account.

Q. And the bank account, you have already testified, compared favorably with the gross income on the income tax work sheets?

A. I was never able to reconcile the receipts as shown by the cash book with the tax return.

Q. Do you mean by that, Mr. Clager, that you were not able to find entered in detail the names of the various checks that were included in the deposits D. Friedberg Loan, is that what you mean?

A. No, what I mean is that if I took all the items of income in the cash receipts book and compared that total with

the tax return, I could not reconcile those two figures. One was much smaller than the other.

Q. Now, let's see about that. How did they compare with the income tax work sheets?

A. The items of income as shown on the cash receipts book, that is, which would be taxable type of income, which we would include as gross income, were very much less in total each year than the amount shown in the tax return.

Q. Putting it the other way, that's the same as saying that there was more money shown on the income tax work [fol. 399] sheets as income than you could find in the books?

A. That is correct.

Q. Now, if you added the amounts that were listed as Friedberg Loans and which were deposited at the same time, that would compare favorably, would it not, Mr. Clager?

A. If you added those in, it would compare favorably.

Q. Now, let's see if you can't give the jury a clearer picture of that, and I think you can be very helpful, Mr. Clager. There was in the cash receipts journal a source of income from retail sales which were listed in detail, customer by customer, is that correct?

A. That is correct.

Q. Now, let's get this very clear, and be patient, if you please. You found in your investigation entries in the cash receipts journal which had customer's names, name by name, amount by amount?

A. That is correct.

Q. And those were retail sales?

A. Well, I wouldn't be able to tell. They were sales. I was told they were sales.

Q. They were income?

A. Yes, I was to believe that.

Q. Now, we will mark that down as one source of income, and if you don't mind, Mr. Clager, I will call it retail sales. It wouldn't make any difference, would it, because income is income, isn't it?

A. Correct.

Q. That is one source of income you found in this cash [fol. 400] receipts journal. Now, you also found in the

cash receipts journal another source of income which was wholesale business or wholesale invoices?

A. Yes, sir.

Q. We will call that No. 2. These names are not important, are they, Mr. Clager?

A. Well, I don't feel they are important. They are different types of income but it is all to be included.

Q. The income tax, Mr. Clager, is levied on the amount of income?

A. Taxable income, that's right.

Q. And it doesn't make any difference whether that taxable income comes from retail sales or wholesale sales, does it?

A. That's correct.

Q. It doesn't make any difference if it comes from miscellaneous income, does it?

A. That's right.

Q. As long as it is in the book.

Col. Windom: At this time I object. That's the fifth time that has been gone over in less than five minutes.

Mr. Sillman: I haven't gone over anything five times.

The Court: Overruled. Go ahead.

Q. Now, in addition to sources one and two; that is, retail entered in detail and wholesale entered in detail, Mr. Friedberg had another source of income from this business, miscellaneous income, did he not?

A. Yes, he did.

[fol. 401] Q. And that miscellaneous income, did your investigation disclose, Mr. Clager, consisted of such things as cleaning, pressing and alterations and things of that kind?

A. Well, I understood he used the term alteration.

Q. And stock suits, ready made sales and things of that kind?

A. I wasn't familiar with that term.

Q. At any rate, any other income that he had would fall into the class of this miscellaneous income?

A. It would have to.

Q. Now, that's a good point. I am glad you said that, Mr. Clager. If we divided his income into three possible

sources, it had to be either the retail sales, the wholesale sales or some form of miscellaneous income?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now, we have got the three sources of income that you found in the book. If you totaled sources one, two and three together, you would get the total amount of income, wouldn't you?

A. Yes, you would.

Q. There were no other outside sources of income that your investigation discovered, were there?

A. No, other than interest income.

Q. Now, that was pretty insignificant?

A. That's all.

Q. That was a very insignificant amount, wasn't it?

[fol. 402] A. Well, it depends upon what insignificant is considered to be.

Q. Aside from that, the sole sources of Mr. Friedberg's income was from this business, wasn't it?

A. That's right, as far as I know that was his only source.

Q. We have now classified it into three kinds, and so I am asking, if you total all these three types of income from this business, would they compare favorably with the gross income that Mr. Friedberg showed on his income tax work sheets?

A. No, sir.

Q. They would not?

A. No, sir.

Q. You get out your figures there and give me the amount of income in these three classes.

A. Do you want income as shown by sales records, sir, or by his cash receipts?

Q. Can you conveniently turn to the retail sales income? You gave that figure in your testimony. I don't have it now.

A. I have given retail sales?

Q. I thought you did.

A. No, sir.

Q. I thought you combined the two of them and said it was less than the amount you found in the——

A. I gave the general statement it was less. I haven't given the figures yet.

Q. Let me ask this. If you have the figures available to [fol. 403] separate the retail and wholesale, do so; if not, give me the combination figures because it is the same thing. Either way.

The Court: Are you referring to any particular year or time?

Q. For the years '45, '46 and '47, the years in which these Friedberg loan items occur.

A. Well, I made an adding machine tape of the wholesale sales, invoices, for the year 1945. They totaled \$14,000——

Q. Pardon me a minute, Mr. Clager. Did you also make a tape for '46?

A. Yes, sir.

Q. And '47?

A. Yes, sir.

Q. Just give us the total amount for the three years.

A. Well, I can't do that. I don't have that total, unless you want me to add them up.

Q. I think we can do that. Give us the three figures.

A. My tape adding up the 1945 wholesale sales tickets totaled \$14,221.51; the year 1946 the wholesale sales tickets totaled \$22,281.89; and for 1947 the wholesale sales tickets totaled \$33,315.61.

Q. Now, those figures that you just gave for the respective years, '45, '46 and '47, were those figures taken from the wholesale invoices?

A. Yes, sir, duplicate copies.

Q. Now, as to those figures, did you make a comparison between the wholesale invoices, that is, Mr. Friedberg's [fol. 404] records, wholesale invoices, and his cash receipts journal?

A. No, I did not.

Q. You did not?

A. No, sir.

Q. Now, then, take the next source of income, sales listed in detail, retail sales.

A. The retail sales, my tape of those sales in '45 from the

retail order book which was given to me, totaled \$10,943.78. For the year 1946 it totaled \$14,125.72. Retail sales for the year 1947 totaled \$12,194.85.

Q. Now, those figures you took from the retail order book?

A. That's what it was referred to.

Q. And, the retail order book was the book in which the name of each customer was entered?

A. I believe that's correct, from my recollection.

Q. Customer by customer, showing the amount of the deposit—

A. With an invoice number or a number before it.

Q. Showing the amount of the deposit and showing the amount of the sale?

A. Yes, sir.

Q. Now, did you make a comparison and an analysis to determine whether those order book entries were entered in the cash receipts journal?

A. I may have made a test check but I could not state definitely.

Q. Wouldn't you say to this jury that, substantially speaking, they were?

[fol. 405] A. The amounts in the order book agreed with the—no, I couldn't make a statement to that.

Q. You haven't made that kind of an analysis?

A. No, I haven't.

Q. Now, when you totaled up these two figures, Mr. Clager, if you got them before you can check my arithmetic—well, I got \$25,165.28 for 1945.

A. I agree within one penny.

Q. Give me the penny and I will correct my figures.

A. You had \$.50 for the wholesale. It is \$.51.

Q. Now give me the next figure.

A. I have a total retail and wholesale sales of \$36,344.61.

Q. And the next one, if you please?

A. For '47, the retail and wholesale sales total \$45,510.46.

Q. Now, did you also total up the amount of so-called Friedberg Loan, miscellaneous entries?

A. Yes, sir.

Q. In these years?

A. Yes, I did.

Q. Would you give us those year by year, '45, '46 and '47.

A. For the year 1945 the entries marked Loan—D. Friedberg were \$9175.00.

Q. Go ahead.

A. For the year 1946 the entries marked Loan—D. Friedberg were \$20,750.00, and for the year 1947 the entries [fol. 406] marked Loan—D. Friedberg totaled \$22,180.00.

Q. All right, now, let's just treat that as income, Mr. Clager, and add that to the previous figure and let's see what we get for these years.

A. I misunderstood you, I thought you were doing some adding.

Q. What I wanted you to do, I wanted to add to the previous figure that you given for each year the amount of the D. Friedberg loans. Just treat that as if it were income and we will see whether it was.

A. Yes, sir.

Q. Now, for the year 1945 what's your total?

A. The retail and wholesale order books total?

Q. Plus—

A. Plus the entries marked Loan—D. Friedberg in the cash book.

Q. Which I am going to call miscellaneous income.

A. Is \$34,340.29.

Q. And for the year of '46 what's the total?

A. \$57,094.61.

Q. And for the year of '47?

A. \$67,690.46.

Q. Now, will you turn to the income tax work sheets for the year of 1945 and tell us what was the amount of the gross income shown by Mr. Friedberg for the year 1945?

A. \$37,471.65.

Q. Now, is that on the work sheet?

A. That is on the work sheet, on the paper of Buckeye Tailoring Company.

[fol. 407] Q. Let's take these year by year, then you won't have to turn back. Now, by adding together the retail sales and the wholesale sales and the miscellaneous entries called Friedberg Loan, you had a figure of \$34,340.29?

A. That's correct.

Q. Now, that figure is taken from Mr. Friedberg's books, is it not, Mr. Clager?

A. Those figures are taken from his records.

Q. That is to say, the retail was taken from the retail order book?

A. Yes, sir.

Q. The wholesale was taken from the wholesale invoices?

A. That's right.

Q. You did not make a comparison to see how they compared with the cash journal by taking those figures from those sources. You added from the cash journal the miscellaneous items designated D. Friedberg—Loan and got \$34,340.29?

A. Oh, yes, the computation made just now, that is correct.

Q. Now, in Mr. Friedberg's income tax work sheets he showed gross income of \$37,471?

A. That's right.

Q. Would you say that that compares favorably?

A. Yes, it compares reasonably favorably. There is some income that can't be accounted for, about \$3,000, on that basis.

Q. Of course, that's favorable to the Government, is it not?

A. That is right, he is reporting more income than these [fol. 408] figures show he had to.

Q. The work sheet that was prepared for the accountant showed \$37,000, in round figures, as against your computation from the books and records showing \$34,000?

A. Yes, the computations you have had me make, that's right.

Q. Let's turn to the income tax work sheet for the year of '46 and compare that with the computation figure from the books.

A. Yes, sir. Do you want me to proceed?

Q. Yes.

A. The work paper attached to the retained copy of the 1946 income tax return filed by Mr. Friedberg shows total income for services and materials of \$61,857.28, and accommodation checks have been deducted from that.

Q. There is a deduction of accommodation checks?

A. Yes, sir, of \$3,074.92.

Q. That leaves what gross income?

A. That would leave a gross income of \$58,782.36.

Q. Now, let's get that comparison again. Here, again, the work sheet shows a little more income than the computation made from the books and records, does it not?

A. That is correct.

Q. Now, Mr. Clager, the actual difference there is about \$1000, isn't it?

A. Yes, about \$1700.

Q. And, that's in favor of the Government, not Mr. Friedberg?

[fol. 409] A. The amount reported on the return is greater, yes, than this computation we have made.

Q. Now, fairly, Mr. Clager, wouldn't you say that that is a favorable comparison within the realm——

A. I would say it was a favorable comparison.

Q. It is not unusual to find such a variance one way or the other, is it?

A. Well, I wouldn't answer that statement.

Q. Well, at least in favor of the Government.

Now, let's get to the next year, '47. How much income did Mr. Friedberg show on his income tax work sheets that year?

A. He shows gross income of \$73,084.09, and from that total has been taken loans repaid.

Q. \$5300——

A. \$7464.

Q. Loans repaid?

A. Wait a minute.

Q. Isn't it \$5300?

A. There is a Loans repaid "Rep." of \$5380.93. There is another figure also, accommodation checks.

Q. How much?

A. \$2079.25.

Q. All right. Now, if you take the gross income figure it is \$73,084.09?

A. Yes, sir.

[fol. 410] Q. How much were the accommodation items?

A. \$2079.25.

Q. By the way, there isn't any question, is there, Mr.

Clager, that if checks were written for accommodation purposes, as we have described them, that they would probably be taken off, having been included in the gross figure. There is no question about that, is there?

A. Well, if he put funds into the business account it wouldn't be taxable income, of course.

Q. And therefore it would be proper to deduct that, would it not?

A. Yes, if it wasn't from a taxable source.

Q. Then, let's deduct it. That's \$2079, and we have \$71,000 in round figures, \$71,004, is that right?

A. I haven't checked it. There is no total here.

Q. Suppose you do that, Mr. Clager, so I have your testimony. \$73,084.09 and you take off the accommodation items which are properly deducted.

A. Deducting the accommodation item of \$2079.25 you get \$71,004.84.

Q. Just to use round figures for comparison, the gross income shown on the income tax work sheet is \$71,000 as against \$67,000 computed from the books and records in the manner to which you have testified?

A. That is correct.

Q. So there, again, there is more income shown on the work sheets than by the computation from the books and [fol. 411] records that you just testified to?

A. That is correct.

Q. That is in favor of the Government, is it not?

A. He has overstated his gross income.

Q. But, speaking practically, we call that comparison a favorable one, do we not?

A. Well, this \$4,000 is getting a little far away from—

Q. But the difference between \$67,000 and \$71,000, you say that is getting far away?

A. We are getting further away, but you can still say, as a general term, that it compares favorably.

Q. Of course, you have heard some reference to a \$5300 error, and that would offset a \$4000 error, would it not, and still—

A. I don't recall a \$5300 error.

Q. The loans repaid item.

A. Oh, yes, there is an item of loans repaid of \$5380 which was taken off the original gross amount.

Q. And, if those loans were not made in the year in which they were repaid, they should not have been deducted from the returns, should they?

A. Well, a payment on a loan would not be a deductible item.

Q. Well, if the loan was made in the year in which it was repaid, and the money flowed into income, it would be a deductible item, would it not?

A. Would you restate that, please.

[fol. 412] Q. If a loan was repaid in the same year in which the loan was made, and the corresponding amount of the loan went into the gross receipts then it would be a proper deduction, would it not?

A. If you were computing on a bank account basis, yes, sir.

Q. And it is when the loan is made in some preceding year that the deduction is not properly made in a subsequent year?

A. Well, if you are on a bank account basis, that is true. If it didn't go into the bank that year you could not take it away from that bank account.

Q. I think that's all we need with those work sheets, Mr. Clager, if you want to unburden yourself of them.

I think you have testified—I will ask you whether you did, I don't recall. Did you compare the entries in the cash receipts journal with the gross income on the work sheets, just as we have done now, prior to today? In other words, in the course of your investigation did you make this kind of a comparison?

A. No, I didn't. Could I clarify that slightly. When I say I did not make that comparison, I did make a rough comparison and I noted the similarity. I want that to be known—a similarity—because I have noted that the cash receipts book tied up with the bank account, deposits in the bank account, which in turn tied up to the return.

Q. You did, in fact, note that there was a favorable comparison?

A. Yes, I did.

Q. In other words, nothing outstanding?

A. No, it was very favorable, I would say.

[fol. 413] Q. Now, it is apparent, is it not, Mr. Clager, that on the basis of those comparisons; that is, total income computed from the books and total income shown on the income tax work sheets, it is apparent, is it not, Mr. Clager, that all of these Friedberg loan items actually got on to the work sheet, not specifically but in amount?

A. Well, the totals compare favorably, sir. I don't know the source of all.

Q. Now, Mr. Clager, does it make one bit of difference from the standpoint of how much a taxpayer owes the Government, whether he shows his income tax as received from retail sales or wholesale sales or miscellaneous income, all of it being taxable?

A. As long as it is all reported, the Government is satisfied, but they would like to audit it.

Q. It doesn't make a bit of difference so far as tax liability is concerned?

A. That's true.

Q. And, in preparing work sheets, does it have any effect or make any difference on the tax liability whether the income is called Friedberg Loan, which is a misnomer, or whether it is called miscellaneous income, if it is shown and included in the total amount that the taxpayer says he made for the year?

A. Well, that is a rather broad question. Depending on what facts they gave me when I asked for the records.

Q. Let's put it this way. Going back to the figures you have given us, Mr. Friedberg says, in substance, when he [fol. 414] prepares his income tax work sheets, handing them to his accountant, he says in substance, "For the year of '45, I took in \$37,471.61." That's what that figure means, doesn't it?

A. I see.

Q. And when you go to the books and records and you add up all of the specific sales, retail and wholesale and all of the Friedberg loan items, which you say are his sole source of income from the business—

A. To my knowledge.

Q. —you come out with a figure of \$34,340. Now, isn't it evidence, then, that these so-called Friedberg loan items

were included in Mr. Friedberg's income tax work sheets? In fact, he included more.

A. You could assume that, yes.

Q. And now, by the same thing, in the year of 1946 Mr. Friedberg says on his income tax work sheets, "My gross income, in substance," he is saying, "was \$61,857.28. And there were accommodations of \$3,000 that I have a right to take off, leaving gross income of \$58,782.61." That's the figure you just gave me.

That's what he says on his work sheet. And, when you go to his books and add up every source of income he had from this business, you come out with a figure of \$57,000. So he really says he made more than his books show, didn't he?

A. Yes, sir.

Q. And he really did include, then, all of the Friedberg Loan items?

A. He would if he used his cash receipts book, yes, sir.

[fol. 415] Q. And, now, for the year 1947, Mr. Friedberg says in work sheet that he took in some \$73,084.09, and that he has a right to deduct Buckeye accommodation item of \$2079.25, so he says his gross income in that year was \$71,008.84. That's what he says in substance when he hands that paper to the accountant, doesn't he?

A. Yes, sir.

Q. And when you go to the books and add up every source of income he had, regardless of how he called it, and even though he gave it a misnomer, if you add up how much income he showed on his books, you had \$67,690.46?

A. That is correct.

Q. So that, again, when he went to his accountant and said how much he made, and the return was made from his work sheets, he gave more income for the year than all of his sources of income on his books added up together?

A. That's right.

Q. But in each instance it compared favorably; it wasn't very much more?

A. Not a great deal.

Q. Then, we can definitely conclude, can we not, that in each instance where Mr. Friedberg, he or his book-

keeper—when an entry was made in this cash journal, D. Friedberg Loan, in some round figure, instead of that being a loan it actually was income, wasn't it?

A. Well, it indicated that there were income items in there, yes sir.

[fol. 416] Q. And, not only does the evidence indicate that there were income items, but of more importance and greater importance is that Mr. Friedberg included each one of these D. Friedberg loans in his income tax work sheets?

A. He did that in effect by reporting what he did.

Q. Now, you and I are both agreed that that kind of an entry, Mr. Clager, should never have been called D. Friedberg Loan. That's not a proper name, is it?

A. It wouldn't appear to be, no, sir.

Q. And, what it should properly have been called, if it represented all of the other miscellaneous income was miscellaneous income?

A. If that's what it was, that's — it should have been called.

Q. Now, I want you to tell the jury here, does it make a bit of difference as to Mr. Friedberg's income tax returns; I mean, as to his income tax liability, whether that income was called by him under that peculiar name D. Friedberg, or whether it had been called miscellaneous income? That wouldn't affect his tax liability, would it, both of them would be the same?

A. No, if the D. Friedberg Loan was actually taxable income, then it would have no—

Q. I am assuming it was taxable income, because he put it in his work sheets to pay tax on.

A. Yes, sir.

Q. So, we will assume it was taxable. So that the misnomer—and I want to make that very clear, both of us are [fol. 417] agreed, you and I, that it should have been called something other than D. Friedberg Loan, but actually it had no affect on his tax liability, did it?

A. That is correct, it would not have.

Q. To clarify that, Mr. Clager, by using just a very homely example, if a taxpayer has \$5000 income and he prepares his income tax work sheets—and we are talking about taxable income—it wouldn't make any difference

just what kind of income that was or just how it was if it was taxable income or what he called it, if the \$5000 gets into the return that's what his bill is figured on?

A. That is correct.

Q. And, what I am concerned with particularly here is your statement which you have already made, that all of these miscellaneous income items did get into those income tax work sheets; that is the fact, isn't it?

A. Well, in the work sheet there is just the one total. I cannot determine how Mr. Friedberg prepared it. You understand that. I don't know where it came from.

Q. Yes, I understand you thoroughly. I am not claiming, nor are you testifying, that in Mr. Friedberg's work sheet he broke down his income into retail sales, wholesale sales, miscellaneous income. He didn't do that, did he?

A. I have no knowledge on how he did it.

Q. Well, you can look at his work sheet and see.

A. Well, he has just one item, gross income. I don't know what it consists of.

[fol. 418] Q. So, he doesn't call it retail sales, wholesale sales, miscellaneous income. He just has the gross item?

A. That's correct.

Q. Those are the figures you have given, \$37,471, for example?

A. Yes, sir.

Q. Now, we understand each other on that, Mr. Clager, that Mr. Friedberg didn't, but the important thing is whether the total amount of the three items was substantially the same as the total amount shown on the books and records, and that you have testified they were?

A. That's correct.

Col. Windom: I object. Mr. Sillman is merely making a speech here for thirty minutes.

The Court: Overruled.

Mr. Sillman: I am finished.

Col. Windom: If you are finished I withdraw the objection.

The Court: Ladies and gentlemen, the Court will take a ten minute recess at this time. You will follow the instructions the Court has heretofore given you.

(A brief recess was taken.)

FRANCIS J. CLAGER, resuming the stand, testified further as follows:

Cross examination (Cont'd.).

By Mr. Sillman:

Q. Mr. Clager, I wanted to ask you a few questions about [fol. 419] a number of the customers' checks that have been introduced in evidence. Some of the customers testified. You were present in the room. Other checks were stipulated. So, for your convenience, you can put aside anything you won't need for that purpose.

A. I don't know what I will need.

Q. You refresh your recollection from the memorandum you testified to concerning Exhibit 19 (b), which was Walter Shapter's check, \$154.50, dated May 15, 1947, deposited 5/16/47.

A. Yes, sir.

Q. Now, I will just take these in the order in which they were given, so get your data on that.

A. I am still not sure what you want. I will have to have a question first.

Q. Well, you had some memorandum, I didn't see it, I don't know what it was. I think you said you made a summary from the books and records, and you testified as to what was shown on the deposit slip and what was shown in the cash receipts journal. Now, that's the one you can get before I start asking questions.

A. All right.

Q. Now, just as you did on direct examination, get down to the place where it has this 19 (b), Walter Shapter check.

A. I have it.

Q. That's the first one we have on our list.

Mr. Clager, it's been conceded by us and stipulated that Exhibit 19 (b) is a check written by Walter Shapter in the sum of \$154.50 dated May 15, 1947, payable to either [fol. 420] American Mill or Buckeye Tailoring, but in any event, endorsed and deposited to the account of Buckeye Tailoring Company. Now, that is the fact, isn't it?

A. That is correct.

Q. Mr. Walter Shapter was a customer of Mr. Friedberg's, wasn't he?

A. That's what he has testified to.

Q. And as he testified, he gave this check in payment for merchandise that he purchased from Mr. Friedberg?

A. Yes, sir.

Q. And so, if he gave Mr. Friedberg a check for \$154.50, Mr. Clager, that would be taxable income, wouldn't it?

A. Yes, sir.

Q. Now, let us see if Mr. Friedberg, using that as a test, included that amount in his income tax return for the year of '47. Give me first your summary of the cash journal, and if you don't have it, I can show it to you here.

A. I have it.

Q. Now, in the cash receipts journal what was entered?

A. There was an entry for \$81.50 and an entry marked Loan—D. Friedberg for \$400. That was a total of \$481.50.

Q. That is correct. And that, Mr. Clager, was entered in the cash receipts journal on May 16, 1947?

A. It could have been the 15th. You see, his receipts for the day before would be deposited the following day.

[fol. 421] Q. Does your memorandum show the 16th?

A. No, it doesn't show the date of the cash receipts entry.

Q. Well, I don't think it is very important, but in order to be clear, see if it doesn't show the 16th there?

A. That's right, Michael Grippa. That's what I had on the check.

Q. Now, the entry, then, that was made by Mr. Friedberg or his bookkeeper, Mrs. Friedberg, on May 16 in the cash receipts journal was Michael Grippa, \$81.50?

A. That is correct.

Q. And D. Friedberg \$400?

A. That is correct.

Q. The word loan isn't on there?

A. It isn't on there, I am sorry.

Q. I know you didn't mean that, but actually the word loan is not on here, but it is the same kind of a miscellaneous entry, isn't it?

A. It is the same type of entry that I have referred to in my previous testimony.

Q. Now, all the way through here, Mr. Clager, and any

questions that I ask you, you are only human, be that some of these entries are called D. Fr. Friedberg Loan or Friedberg Loan in these variations. We won't quibble over the wording that you understand that, do you understand that they are the same type of miscellaneous income entries?

A. Well, I took all those in as loans to the business. That was my understanding of it.

[fol. 422] Q. And, you have just a little while ago computed them all into income?

A. That's included, that particular loan would be included, or D. Friedberg entry would be included in all totals.

Q. Now, I am just trying to eliminate these unimportant things, whether it is Friedberg Loan, or what. It makes no difference. It is the same entry.

Q. Now, I want you to turn to the bank deposit slip and tell me on that date what deposit was made to the bank account of The Buckeye Tailoring Company?

A. Well, the deposit date—

Q. How much?

A. —May 16, 1947 was for a total of \$481.50.

Q. Just pause a minute there. So that the first thing that we get is that the amount of the deposit, \$481.50, exactly the same as the total amount entered in the cash receipts book?

A. That is correct. They reconcile.

Q. Now, in the cash receipts book that total amount of \$481.50 was broken down, as you have just testified in two items: one is Grippa and the other is Friedberg, which we mean Friedberg Loan or miscellaneous. Now, tell me how that \$481.50 is broken down in detail on the bank deposit slip which Mr. Friedberg prepared or somebody prepared for him?

A. Well, my copy shows the following: Currency \$65.97, three checks as follows: \$81.50, \$179.53, and \$154.50.

Q. Now, the three checks, \$154.50, \$179.53, \$81.50, plus [fol. 423] the cash \$65.97, totals \$481.50?

A. That is correct.

Q. Exactly the same amount that is in the cash receipt journal?

A. Absolutely.

Q. Now, among the checks that were deposited, you mentioned a figure of \$81.50?

A. Yes, sir.

Q. Wasn't that the check of Michael Grippa?

A. There was a notation in front of the \$81.50, on the ticket, of Grippa.

Q. Now, if it happens that a bank deposit slip dated May 16, 1947 has the notation Grippa in front of the figure \$81.50, and the cash receipts journal has the name Michael Grippa \$81.50, isn't it reasonable to assume that that's one and the same thing?

A. I would assume that fact.

Q. Now, does the bank deposit slip show that the check for \$154.50 is the Walter Shapter check, or does it show Shapter?

A. The bank ticket will show the name Shapter in front of the amount of \$154.50.

Q. Now, isn't it reasonable to assume, then, that if it shows the name Shapter, \$154.50, that that's the same as the Walter Shapter check, \$154.50, which was issued on May 15, 1947?

A. Yes.

Q. There couldn't be any question about that, could there?

A. No, it was verified.

[fol. 424] Q. So that the Walter Shapter check that Mr. Shapter testified to in this court room actually found its way into the bank account?

A. That's correct.

Q. It also found its way into the income tax return, didn't it, through the Friedberg Loan designation?

A. Well, taking this item into consideration, it could be included in the return, yes.

Q. Because, after all, if the \$400 item that is in the cash journal that's called D. Friedberg, \$400 even, went into the reported income of Mr. Friedberg, obviously it included the component parts that made it up, isn't that right?

A. I would like for you to repeat that.

Q. I will put it like this. There isn't a bit of difference, is there, from the standpoint of income tax liability,

whether Mr. Friedberg, in adding up the total amount of his income, took a figure of \$400 for May 16, than if he had taken a figure of \$65.97 cash, \$179.53, \$154.50 in checks, which total up——

A. It would be the same total.

Q. That's the important thing, that's the point. It is the same amount exactly. The only thing is that on the bank deposit slip it is broken down in detail, \$65.97 cash, right?

A. That's what it shows.

Q. \$81.50, Michael Grippa, \$179.53—what name is on that?

A. That shows Buckeye.

Q. \$154.50 Shapter. The Walter Shapter we are talking about?

[fol. 425] A. That is correct.

Q. Now, I want to be very clear about that. The total amount, therefore, of these items being \$481.50, it doesn't make a bit of difference whether they were listed in detail on the work sheet or not, does it?

A. Not from a tax standpoint.

Q. As a matter of fact, a person wouldn't, on their income tax return, list each customer's name in detail, would they?

A. That would be unusual.

Q. That would be improper, wouldn't it?

A. They can give any information they want to support their returns.

Q. You don't hear of business people listing all of the names in detail?

A. No, they are to have records available from which they can support their returns.

Q. Now, there is no difficulty at all in turning to the two very positive records, one the cash receipts journal, which is written in either Mrs. Friedberg's handwriting or somebody in the business, that's record one, and another very positive record is the bank deposit slip which is retained by the bank there. That's where you got them from?

A. That's where I got my copy.

Q. Now, you put those two together and they tell this story, do they not, that on May 16, Mr. Friedberg took in

taxable income of \$481.50? That's what the cash book says, doesn't it?

A. No, the cash book reflects \$81.50 and D. Friedberg, which of course I wouldn't normally, when making an audit, assume that that was income which would be taxable.

[fol. 426] Q. You say you would not assume that?

A. No, I wouldn't assume that.

Q. But, as you got into the investigation you found out he counted it as income and that's what counts?

A. I never found that out for certain.

Q. They add up the same.

A. Well, they add up close to it. There is another way of doing the same thing, sir.

Q. We have just gone through all these figures, Mr. Clager. We are not going back over those figures again. I say that this cash receipts journal shows \$481.50 for that day and that the deposit shows the same figure \$481.50.

A. That's absolutely correct.

Q. Now, Mr. Clager, without burdening this jury with a lengthy detailed account of each one of these checks, the total of which was \$1701.11 plus some miscellaneous items here, is what you have just testified equally applicable to these other customer's checks, Martin Polster, John Canata?

A. Well, you mentioned that the cash receipts books did tie in with the deposit ticket. In general I would say that was the general thing, that they did tie in.

Q. And if the loan item was included in Mr. Friedberg's income, it included the checks that made up the loan item?

A. Yes, there should be a relationship between them, yes.

Q. Sure, if he included \$400 income for that day, he [fol. 427] obviously included Mr. Shapter's check for \$154.50 and he also included the \$179.33 check, he also included the \$65.97 cash and the \$81.50 check. So, they went into income, didn't they? Now, Mr. Clager, I have here altogether, as these witnesses were called, about 24, 25. I don't recall whether all the witnesses were here, but most of them were. Walter Shapter, Martin Polster, John Canata, Paul C. Kaefer, Samuel Roderick, Allen Kempke, Claude Bendure, John Dillie, Willard Lauterbach, and on down the line, Mr. Roumeliote. Is what you just testified

as to the income that Mr. Friedberg received from Mr. Shapter equally true for all of these checks, or shall I go through them one by one?

Col. Windom: Object. You make up your own mind what you do.

Mr. Sillman: If he says they do, I don't have to do it.

Col. Windom: He has already answered that one.

The Court: Overruled. He may answer.

Q. Do we have about the same story?

A. We would have about the same general story.

Q. Now, Mr. Clager, did you make any effort to actually reconstruct Mr. Friedberg's income?

A. In what manner are you speaking about?

Q. Well, I am not an expert and I don't think I would quite know how as a lawyer, but accountants have a way of reconstructing income and making comparisons and analyses. Did you attempt that or didn't you?

A. I will speak from my general experience, and that is you cannot reconstruct income unless you have tracks which you can follow. In other words, a man buys a suit, [fol. 428] in this instance, and pays cash and never comes back again. We cannot trace that sale unless there are invoices or some accounting data available with which we could do that.

Q. Now, Mr. Clager, you are confusing the word tracing, which is investigation sort of work, and what I am talking about, accounting analyses, reconstruction by accountants, the things that certified public accountants frequently do. I am only asking whether you made any effort to do it in this case.

A. I did.

Q. Where are your figures?

A. I have just read my figures to you there in regard to the retail and wholesale sales as they are reflected in his records.

Q. In other words, what you term a reconstruction—and that's perfectly all right—are the figures that you gave me before, \$14,221.51, wholesale?

A. That is correct. That is my addition of his records.

Q. And those are the figures we have been through and which we have compared with the amount that he showed on his work sheets, income tax work sheets?

A. I have added up all his records to determine—the totals were not available and I went through——

Q. You didn't understand me. If what you are now talking about are just the same figures I questioned about, I won't repeat the questions on them, when you say you added up the wholesale.

A. Yes, the figures I gave you at that time.

[fol. 429] Q. We have been over that, in other words?

A. Sure.

Mr. Sillman: I have no further questions, Your Honor.

Redirect examination.

By Col. Windom:

Q. One of the last remarks Mr. Sillman made was, and I quote my writing, "There would be no difficulty in turning to two very positive records,"—I end the quote at that point—for the purpose of showing that the Friedberg loans were actually sales receipts. Just how long did it take you to find that out, Mr. Clager?

A. I first heard that statement from Mr. Friedberg's attorney. While I contacted Mr. Friedberg he never at any time indicated that those entries which I have referred to as Loan—D. Friedberg were anything but as they state, loans that he made to the business.

Q. What, in fact, did Mr. Friedberg tell you about those entries, either D. Friedberg or Loan—D. Friedberg?

A. Well, he explained to me that he needed capital with which to work in his business, and that he took funds from his safe deposit box and placed them in his checking account, and these entries in the cash receipts books reflected these funds put into the business.

Q. I will ask you whether or not you could determine from Mr. Friedberg's books whether the so-called entries included all of the miscellaneous sales made?

A. I could not tell from Mr. Friedberg's records that [fol. 430] there were any miscellaneous sales made. It was

only when I went to the bank and examined the bank deposit tickets that I found a discrepancy. I found that there were checks received that day that were not reported in the cash receipts book.

Q. Mr. Sillman has used the words and I quote, "Sole source of income from business." From your investigation did Mr. Friedberg's books reflect all of his income?

A. His books did not reflect all of his income.

Q. What do you mean by that, please?

A. I mean, taking it from the angle of sales, detail on sales, they did not tie out with the return by a number of thousands of dollars each year. I went to his cash receipts book and examined it, and I found, taking those items which I was led to believe were sales, various individual entries in the cash receipts book, adding those up, I was considerably under the income reported on the tax return.

Q. How did Mr. Friedberg's expenditures for purchases of all types, including bonds in the years in question, '44, '45 '46 and '47, compare with his reported income?

A. Well, taking his total expenditures, I found them to be considerably greater than his reported income.

Q. Mr. Sillman questioned you as to whether you had looked into real estate transactions of the defendant prior to 1944. Did you investigate those?

A. Yes, sir, I went into Mr. Friedberg's—

Q. Tell us what you found, please?

[fol. 431] A. —into his real estate transactions. I checked the real estate record at the county courthouse, starting with the year 1922, general index, and I found that Mr. Friedberg had acquired the following properties: 701 Bedford Avenue, Columbus, was purchased on December 24, 1924 from a Homer—and it looks like—Rosie B. Newman. Documentary stamps involved were \$1.00, and there was no mortgage indicated that had been assumed.

Q. When, if ever, did he dispose of that property?

A. The property, according to the courthouse records, was disposed of July 10, 1928 to a Charles and Gertrude O. Kennaw. There were no stamps affixed to the deed and it shows that they had assumed a mortgage due the First Citizens Trust Company dated May 4, 1928, issued in the

amount of \$5500, and that the balance due was then \$5506.41.

Q. What other transactions did you find?

A. I found that he had purchased property known as 705 Bedford Place, Columbus, from Hattie Amon, on March 5, 1924. Stamps affixed to the deed were \$3.00, and there had been a mortgage due, Guaranty Title and Trust Company. Also a balance due to Homer E. Newman on mortgage. There were no figures shown.

Q. And, when, if ever, did he dispose of that property?

A. Records show that he sold this property to Ellis E. Snyder and Pauline W. Snyder on May 17, 1926. There were no stamps affixed to the copy of the deed available at the court house. No reference to stamps. It shows there was an \$8,000 mortgage assumed with an unpaid balance of \$6801 at the Guaranty Title and Trust Company.

[fol. 432] Q. What other transactions?

A. It shows that Frances Friedberg took a \$2300 second mortgage on this sale on May 17, 1926, which was released May 26, 1927.

The property known as 700 Kimball Place, Columbus, Ohio, was acquired on May 18, 1926 from Ellis E. and Pauline W. Snyder. There were no stamps affixed to the deed. This property, according to the record I examined, was transferred to John C. and Ethel Lynch on December 9, 1926. There were no stamps or no mortgage indicated. However, there was additional information I secured. There was a first mortgage issued by Central Ohio Finance Company to Lynch in the amount of \$6,000, and that Frances Friedberg received a second mortgage for \$1850 dated December 9, 1926 and released June 30, 1927.

Q. What else did you find?

A. Records show that the property known as 9400 acres in O'Shaughnessy Hills, Franklin County, which is on Riverside Drive, was acquired on September 7, 1929 from O'Shaughnessy Hills, Inc. There were no stamps affixed to the deed. No reference to mortgage. This property was transferred on January 20 of 1931 to Rae Hess of Hartford, Connecticut. It was the first of four parcels transferred at that date. There were no stamps affixed to the deed. A copy of the deed is available. On the 28th day of

January 1931 this property was transferred from Rae Hess and Hymen Hess to Mr. Friedberg. There were no stamps or mortgages shown. And on June 11 of 1934 the property was transferred to a George Zimmerman. There was no revenue shown, no mortgage indicated. It was the first of three parcels transferred to Mr. Zimmerman, according [fol. 433] to the deed. On June 13, 1934 this property was transferred from George Zimmerman, or was reacquired from George Zimmerman on June 13, 1934. There were no revenue stamps.

Q. Reacquired by whom—Mr. Friedberg?

A. Yes, it was the first of three parcels which were transferred back to him, the same three I mentioned previously, and the deed was recorded on September 10, 1945. That's eleven years later.

There is a property in Eastgate Sub-division on Columbus known as 131 Nelson Road. Records show that on March 15, 1929 this property was acquired from H. L. Bryan and Company. There were no stamps shown but it shows there was assumption of a mortgage in the original amount of \$9,000 due Prudential Insurance Company of America, that on January 20, 1931 this property was transferred to Rae Hess, Hartford, Connecticut. There were no stamps shown on the deed, but he assumed an original mortgage of \$9,000 due Prudential Insurance Company. It was the fourth of four parcels transferred on that date. It further shows that he reacquired these from Rae and Hymen Hess of Hartford, Connecticut on January 28, 1931. There were no stamps or mortgages shown, and the deed was not recorded until August 17, 1933, which is two and a half years later, and the record further shows that on September 8, 1937 the property was transferred from Mr. Friedberg to Home Owners Loan Corporation, documentary stamps of \$6.50, and the transfer was involved in case 149916.

Q. That is the Friedberg home that was foreclosed, is it not?

A. The records are here in court.

[fol. 434] Q. What else did you find?

A. I found that Mr. Friedberg acquired a property in Moler Addition, 494 to 496 Sheldon Avenue, Lot No. 3, from

Charles C. and Gertrude Kennaw. There were no stamps shown. This acquisition was on July 11, 1928. There were no stamps shown, but mortgage was assumed from the Buckeye State Building and Loan in the original amount of \$5,000. Also assumed a second mortgage from the Franklin Mortgage Company in the amount of \$1500. This same property was transferred to the H. L. Bryan Company on April 16, 1929, and that further, in 1929 it was transferred from the H. L. Bryan Company to a gentleman by the name of Musselman, and that this Musselman, Mr. E. E. Musselman, transferred the property to Mr. Friedberg and his wife on January 31, 1931. There were no stamps shown. There was a mortgage to the Prudential Insurance Company, balance due \$5300.

It further shows that this property on April 18 of '31 was transferred to Rae Hess of Hartford, Connecticut, that Prudential Insurance Company held a mortgage on the property and the balance due assumed by the person receiving the property was \$5260. It further shows that Mr. Hess transferred it back to Mr. Friedberg on April 28, 1931, which is ten days later. There were no stamps and it was subject to the former deeds, is all it said. The property was transferred from Mr. Friedberg by the sheriff to Prudential Insurance Company of America, Case No. 143854.

Q. Was that a foreclosure case?

A. That was. There was a judgment in the amount of [fol. 435] \$5533.91, and there was \$3.00 shown as the amount involved in the sale.

Q. Are there any other real estate transactions?

A. There are. The property known as 208 Stanwood Road, Bexley, Ohio, was acquired from a Zimmerman—I correct that. Property known as 208 Stanwood Road was acquired on August 27, 1928 from Samuel Hillman. There were no stamps shown on the mortgage—there were no stamps shown on the deed nor was there a mortgage shown. This property was transferred to Rae Hess of Hartford, Connecticut, on January 20, 1931. It was the second of four parcels transferred at that time. There were no stamps or mortgage shown on the record. This property was further transferred from Rae Hess and Hyman Hess

on January 28, 1931. There were no stamps shown. It was the second of three parcels so transferred on that date. It was further transferred from Rae Hess to George Zimmerman on June 11, 1931. There were no stamps indicated. It was the second of three parcels transferred that date. And it was transferred further from George Zimmerman to Mr. Friedberg June 13 of 1934 and it was the second of three parcels, and it was recorded on September 10 of 1945. It showed \$3.50 in stamps plus the assumption of a balance due on notes and mortgage given Standard Savings and Loan Company, Columbus, Ohio, by the seller. This property, 208 Stanwood Road, was sold then to Dorothy Zuckerman on March 1, 1941. Stamps were \$1.65 plus mortgage at National Life Insurance Company of Vermont in the amount of \$7600. That's the original amount. I do not have the balance on that mortgage.

There is another property at 204 Stanwood Road acquired December 9, 1926 from Ethel M. Lynch. There are no [fol. 436] stamps shown. The property was transferred to Mr. Hess on January 20, 1931. No stamps shown. It was the third of four parcels so transferred. Eight days later, on January 28, 1931, it was transferred from Hess to Mr. Friedberg. There were no stamps shown. It was the third of three parcels transferred by Mr. Hess at that time. Mr. Friedberg then transferred the property to George Zimmerman on June 11, 1934. There are no stamps shown. It was then transferred back to Mr. Friedberg from George Zimmerman on June 13, 1934, which is two days later. It was filed on September 10, 1945 and there are no stamps shown. I am having just a little bit of trouble locating the final disposition of that property at 204 South Stanwood Road. It is the last property involved here.

Q. Let me ask you this, Mr. Clager. You have testified now, and it is in evidence, that there was a foreclosure of the property at 131 North Nelson Road, the Friedberg home. You testified that there was a foreclosure of a second piece of property belonging to Mr. Friedberg. I will ask you whether or not he was involved in a third foreclosure?

A. There are only two foreclosures, the foreclosure which has been admitted into evidence, which would be the 131

North Nelson Road, under the HOLC, and this one I have just mentioned, according to my records here.

Q. I am under the impression from reading your notes, which are yours and not mine, that there was a third?

A. Well, he was involved in a further court action, but—

Q. Was that a foreclosure action?

A. Well, it was. It was in regard—it was listed as [fol. 437] Frances and David Friedberg and Charles C. Kennaw and Gertrude O. Kennaw, but my examination indicated he didn't own the property at that time and he was brought in a second—

Q. To clarify that, will you give us the chain of title of that—

The Court: You can do that tomorrow. The Court will adjourn until tomorrow morning at ten o'clock. During the intermission, ladies and gentlemen of the jury, you must follow the instructions heretofore given you, in every respect.

(A recess was taken until ten o'clock a. m., December 19, 1951.)

WEDNESDAY MORNING SESSION

December 19, 1951

FRANCIS J. CLAGER, resuming the stand, testified further as follows:

Redirect examination (Cont'd).

By Col. Windom:

Q. I believe, Mr. Clager, that my last question, which was pending at the close of yesterday, was to ask you to give me the chain of title on what I referred to as the third foreclosure action.

A. May I ask a question to clarify your question?

Q. Yes.

A. May I find out which I have already discussed? I am [fol. 438] not familiar with my testimony of yesterday.

Q. I think you were talking about the Kennaw property which was not owned by Mr. Friedberg at the time of this action. That's the reason you had not referred to it as the third foreclosure because the property didn't belong to Mr. Friedberg at the time.

A. I can give you that. My examination of the court-house records reveals that the property at 701 Bedford Avenue was purchased by Mr. Friedberg on December 24, 1924 from Homer E. and Rosie B. Newman, that it was transferred to Charles and Gertrude O. Kennaw on July 10 of 1928, that they assumed a mortgage due the First Citizens Trust Company dated May 4, 1928 in the principal amount of \$5500, that the balance due at the time of the transfer was \$5506.41. The court house records further show that in the civil suit, docket, case 131822, docket 224, which is filed in box 7295 at the court house, that the Federal Home and Mortgage Corporation filed suit against Frances F. Friedberg and others, and that a decree was issued in this case in favor of the plaintiff and a judgment. The property was sold and there was a deficiency judgment issued on November 6, 1934 in the amount of \$2200.95 against the defendants.

Q. There were, in fact, three foreclosures you found against Mr. or Mrs. Friedberg?

A. There are three foreclosures.

Q. Mr. Clager, referring to your cross examination by Mr. Sillman relative to the bank deposits and cash book records of Mr. Friedberg, was it possible for you to determine if all of the deposits shown on those bank records were income receipts?

[fol. 439] A. I could not determine positively that the income shown by the bank statements I examined was taxable income.

Q. As a practical matter, then, were you able to use those bank statements in making an accurate audit of his books?

A. No, sir.

Q. You have said in answer to a question by Mr. Sillman that the amount shown on the accountant's work sheet—that's the sheet prepared by Mr. Weiss—

Mr. Sillman: Prepared by Mr. Friedberg for the accountant, Mr. Weiss.

Q. —prepared by Mr. Friedberg for his accountant, Mr. Weiss, that the amounts were approximately the same. I ask you whether you could definitely determine that the items listed as Loans—D. Friedberg or just as D. Friedberg were included in the receipts reported in his income tax return?

A. I could not determine that from the records I had available to me.

Q. These checks received from customers which were deposited in the Buckeye Tailoring account which you have testified were shown on the records apparently as D. Friedberg or Loan—D. Friedberg, were you able to trace that exact check or amount into the receipts reported by Mr. Friedberg for tax purposes?

A. No, I was not able to do that.

Q. This entry that we have heard much testimony about, Loans—D. Friedberg, or D. Friedberg, was that a true entry?

[fol. 440] A. My investigation disclosed that it was not a true entry.

Mr. Sillman: Now, if the Court please, I am going to object to that. That leaves sort of an unfair inference, unless the witness will explain what he means by true. It sounds like it is the opposite of false.

The Court: He may explain.

A. Well, they have used the term false here. It was actually a false entry in the records, as far as verifying the amount as shown or nature of the income reflected in the cash receipts book.

Q. Please refer to that work sheet for the year 1947; that is, the tax year '47, and to the tax return for that year of '47. That is 1 (e) and 3 (d).

A. I have referred to them.

Q. What was the income reported by the taxpayer on his income tax return?

A. Taxpayer reported sales for the year 1947 of \$64,623.91.

Q. What does the work sheet show for that same item?

A. The taxpayer showed gross income on his work sheet of \$73,084.09, from which he deducted accommodation

checks and loan repayments totaling \$7460.18, which gave him a net of \$65,623.91.

Q. Mr. Clager, these terms Loans—D. Friedberg or just D. Friedberg, could you determine whether all of these miscellaneous items were included in such terms?

A. If I understand your question correctly, I found that deposit tickets which I examined did not reflect on the books [fol. 441] where they would show Loans—D. Friedberg. In other words, on the date of deposit there were no loans or accommodations shown in the cash receipt book. I found that there were checks deposited that day which were not reflected in the cash receipts book.

Q. Mr. Clager, there is much questioning and answering about what Mr. Sillman has referred to as an error in your net worth statement in the sum of \$250. Will you take that statement, please. If I understand correctly, for the tax year 1944 you have testified that you have overstated Mr. Friedberg's income \$250, is that correct?

A. That is correct.

Q. That you have further testified that for the tax year 1945 you have understated his income \$250, is that correct?

A. That's correct. It is a compensating mistake.

Mr. Sillman: If the Court please, I am not concerned with this mistake, but I should like it clearly understood that this witness has never testified that he overstated or understated, but has merely computed it by the net worth computation method. I want a clear distinction. Whether he claims this is actual income or whether he claims this is a computation by net worth, he has qualified it by saying it was income by a computation method.

Col. Windom: I *with* withdraw the question.

Q. Now, Mr. Clager, I will ask you whether or not you have testified that by your computations on a net worth basis you have overstated the defendant's income for the tax year 1944 by \$250?

A. I have overstated by \$250.

[fol. 442] Q. And by your computations on a net worth basis, have you testified that you understated his income for the tax year 1945 by the sum of \$250?

A. I have understated his income for the year 1945 by \$250.

Q. Mr. Clager, what, if any, was the difference between the tax rate in the year 1944 and the year 1945?

A. The tax rates were the same for the year 1944 and 1945.

Q. Mr. Clager, referring to the defendant's income tax returns as your basis, was the defendant in a higher or lower bracket in 1945 than he was in 1944?

A. The surtax net income, which is on a graduated scale—the normal tax is a straight 3 per cent, and would be the only variable here. I find that the taxpayer for the year 1944 was in the surtax bracket at 43 per cent. In other words, he was required to pay 43 per cent of his income as shown as surtax net income. I find that for the year 1945 the taxpayer was in the 53 per cent bracket due to his greater income for that year.

Q. Mr. Clager, what was the net effect of your error?

A. The net effect of my error, since there is a 10 per cent variation between the 43 and 53—

Q. In whose favor?

A. In favor of the taxpayer in this instance, and the \$250 involved would amount to a \$25 error in favor of the taxpayer.

Q. In favor of this defendant?

A. We understated his tax liability based on our computations by \$25.00.

[fol. 443] Q. Mr. Sillman has asked you in cross examination whether you included any cash at the start of your net worth computation. In other words, as of December 31, 1941 you have stated that you did not, is that correct?

A. That is correct. I have not included currency.

Q. Will you tell us briefly why you did not.

Mr. Sillman: If the Court please, I object, because this will be the conclusion of the witness, which is an ultimate fact for the determination by the jury.

The Court: Overruled. You went thoroughly into that on cross examination.

A. Based on the following evidence I did not include currency in my financial statement I prepared for the taxpayers, the net worth statement, as of December 31, 1941.

Investigation disclosed that Mr. Friedberg had borrowed

on his insurance policy in 1931, which was not paid in 1935, on which he paid 6 per cent interest. I found that he had refinanced his home through the Home Owners Loan Corporation in the year 1933 and that this loan was foreclosed by that organization and deficiency judgment secured by the Home Owners Loan Corporation, and that the deficiency judgment was settled for the amount of approximately \$100, the deficiency judgment being approximately \$3,000.

Mr. Sillman: I am objecting to all of this, Your Honor. The Court: Overruled.

A. I also made an examination of the court records [fol. 444] I testified to yesterday, in regard to all property which the taxpayer owned, and I found that he owned the property at 494 to 496 Sheldon Avenue, the foreclosure action was brought by the Prudential Insurance Company, holder of the mortgage, which was later dismissed, and that at a later date, in 1934, he was again a foreclosure action which was brought against this property and the court entered a decree in which they ordered the sale of the property. The property was sold, according to court records, and there was still a balance of \$256 due the Insurance Company by Mr. Friedberg, and the court ordered a deficiency judgment issued in that amount.

I also found that another property, which I discussed yesterday, at 701 Bedford Avenue, in the taxpayer's name was foreclosed upon by the Federal Home and Mortgage Company Corporation, which was a holder of a mortgage against this property in the name of Frances Friedberg and David Friedberg, Frances being his wife. This ended in a decree being issued on November 6, 1934 which the house was foreclosed—the house was sold, as I should say, and the proceeds were insufficient to pay the mortgage, and the decree included a deficiency judgment in the amount of \$2220.95 against the taxpayer.

I also, in my investigation, reviewed a financial statement which the taxpayer had issued to the National Insurance Company of Vermont on October 20, 1933, in which he stated in his financial statement given to secure a loan to purchase the house at 208 South Stanwood .

nue, he had cash on hand of \$150 and he desired to borrow \$7600 on a first mortgage.

[fol. 445] I also examined the taxpayer's source of capital as shown by his records for the years 1941 and 1942 and found no indication of currency from an undisclosed source. In other words, all funds flowed from known assets of the taxpayer's bank accounts. I also found that in analyzing the bank account just prior to the period under review, that all deposits were from known sources.

And so, for those reasons, I could see no reason why I should give consideration, or rather, include in this statement which I have prepared an amount of currency, which he states he would have.

Mr. Sillman: Now, if the Court please, just for our records, we move that this answer be stricken as the conclusion of the witness.

The Court: Overruled.

Q. Mr. Clager, I will ask you whether or not you took into consideration the fact whether or not Mr. Friedberg had his safety deposit box during the time in question?

A. I did take that into consideration.

Q. Did he or did he not have a safety deposit box during that time?

A. My investigation—and I also questioned Mr. Friedberg about the safe boxes he had in prior years, and I found that he had a safe deposit box, that he had maintained a safe deposit box at the Franklin Federal Savings and Loan in the name of Frances F. or David Friedberg. That was opened in 1930 and was closed in March 14 of 1935.

Mr. Sillman: If the Court please, this is a repetition of his testimony.

The Court: Yes, I see no necessity of repeating. He [fol. 446] has already testified to that. You may answer the question, Mr. Clager, and stop after you have answered the question.

Q. You did take that into consideration?

A. I did take the fact that he had this box into consideration and it was closed, and there was not another box, to my knowledge, opened at that time, or in existence.

Q. I am not sure, this might be repetitious. Did you find any record of a safety deposit box in either of the Friedberg's names between March 14, 1935 and May 2, 1941?

A. I did not find a safe box in the name of the Friedberg's during that period.

[fol. 447] Col. Windom: The Government offers in evidence Government's Exhibit 28, which is the original pleading and file of the Common Pleas Court of Franklin County, Ohio, case 131822, The Federal Home and Mortgage Company, a Corporation, vs. Frances F. Friedberg, David Friedberg, and others.

The Court: Is there objection?

Mr. Sillman: No objection.

The Court: It will be admitted.

(Government's Exhibit 28 was offered and admitted in evidence.)

Col. Windom: The United States offers in evidence Government's Exhibit 29, which is the original file of the Common Pleas Court of Franklin County, Ohio, case No. 143854, Prudential Insurance Company of America vs. David Friedberg.

The Court: Is there objection?

Mr. Sillman: None, Your Honor.

The Court: It will be admitted.

[fol. 448] (Government's Exhibit 29 was offered and admitted in evidence.)

Col. Windom: I desire from the latter exhibit to read two of the filings. Court of Common Pleas, Franklin County, Ohio. Prudential Insurance Company vs. David Friedberg. I will omit the formal portion.

"Now comes the defendants, David Friedberg and Frances F. Friedberg, and represent to the Court that a judgment has been taken against them in the within action in the sum of Five Thousand Five Hundred Thirty-three Dollars and Ninety-one Cents (\$5,533.91), together with interest and costs, and for foreclosure of the premises described in plaintiff's amended petition; that the premises have been appraised at Four Thousand Five Hundred Dol-

lars (\$4,500.) and have been ordered sold on the 9th day of March, 1935.

"Defendants further represent to the Court that the property in question is a double house; that both sides are rented at a rental of Twenty Dollars (\$20.) per month; that a receiver has been appointed to collect said rents and is collecting same, and that the income therefrom is sufficient to pay current taxes and interest.

"Defendants further represent that said real estate is worth in excess of the aforementioned judgment, but that if it is sold on the present depressed market it will bring far less than said judgment.

"Wherefore, defendant moves the Court for an order postponing the aforementioned sale of said premises, in accordance with the provisions of Section 11588 of the Ohio General Code, known as the Best Act. Respectfully submitted."

[fol. 449] Then appear the signatures of Schanfarber and Schanfarber, Attorneys for the defendants. David Friedberg and Frances F. Friedberg.

Notation: "Copy of above motion received March 4, 1935. Clarence B. Folkerth, Attorney for Plaintiff."

Then appears on the back a notice of hearing signed by Schanfarber & Schanfarber.

"Court of Common Pleas, Franklin County, Ohio, Prudential Insurance Company of America vs. David Friedberg. Entry.

"This matter came on for hearing upon the motion of the defendant to postpone the sale of the premises described in the petition under the provisions of Section 11588 of the General Code of Ohio; and the court, after hearing had, announced that the sale would be postponed for a period of six (6) months provided the defendant pay the costs already incurred in advertising the premises for sale amounting to Ten and 25/100 (10.25) Dollars, the current taxes now due and payable, and the sum of Ten (10.00) Dollars per month to the plaintiff during said six (6) months period. The defendant by his counsel thereupon announced in open court that he would not be able to comply with those terms. Whereupon the court overruled defendant's motion to postpone said sale."

Then appears the signature Randall, Judge.

[fol. 450] Recross examination.

By Mr. Sillman:

Q. I am going to take these matters point by point, Mr. Clager. I am just going to start backwards from where my memorandum stopped and just take you right back through everything that the prosecution has asked you now.

You testified on this redirect examination that there were certain safe deposit boxes that you found. Do you claim that you found record of all of the safe deposit boxes that these people had, or do you think maybe you overlooked some?

A. I do not think I overlooked any.

Q. Well, I know you didn't intentionally overlook any, [fol. 451] but you might have mistakenly overlooked some, mightn't you?

A. I was advised by Mr. Friedberg as to where his boxes had been located and I relied upon his statement to me.

Q. Did you make any check of the National Bank of Commerce?

A. The National Bank of Commerce was not in existence during my investigation, sir.

Q. I didn't ask whether it was in existence. We made a check of it. Now, when you go to the bank, Mr. Clager, and ask them whether they had a record of a safe deposit box, they must furnish you with that information?

A. They are required to do so.

Q. They are required to furnish you that?

A. I can't force them to.

Q. They are not always required to furnish us that information, are they?

A. That's right.

Q. So, you do have a little advantage.

Col. Windom: I object to that.

The Court: Yes. Sustained.

Q. Now, Mr. Clager, do you know, as a matter of fact, that Mr. and Mrs. Friedberg had a safe deposit box in the National Bank of Commerce on July 6, 1926?

A. I never knew that to be a fact or ever heard of it.

Q. Do you know that that box was not surrendered until August 13, 1928?

[fol. 452] A. I did not know of this safety deposit box. I was never advised of it.

Q. That's one box, if there was such a box, that you did not—

A. It wasn't disclosed.

Q. —that you didn't find.

A. I rely upon the taxpayer to give me some information. I would have to canvass every bank in Ohio, you might say.

Q. Not in Ohio. How about Columbus, Ohio?

A. He could go to Bexley. In other words, he can open a safe box anywhere in the United States, as far as I know.

Q. Are you telling this jury that the only boxes that you attempted to investigation were the boxes that Mr. Friedberg specifically told you about?

A. That is correct. I relied upon his information.

Q. And you didn't attempt, independently, to ask the five or six banks, such as the City National Bank? That's one of the three leading banks. You didn't ask whether he had a box there?

A. I did not.

Q. I take it, then, that you do not know that Mr. and Mrs. Friedberg also had a safe deposit box in the City National Bank and Trust Company opened on August 13, 1928?

A. I did not know that fact.

Col. Windom: What's the date?

Mr. Sillman: August 13, 1928. That's the date that the National Bank of Commerce was discontinued.

[fol. 453] Q. Did you know that they maintained that box from that date until June 8, 1931?

A. I did not know that.

Q. Now, without going into any further detail, Mr. Clager, about the various safe deposit boxes, it is evident that you quite possibly might not have listed to the jury all of the boxes that Mr. and Mrs. Friedberg had during this period?

A. All within my knowledge, sir, I listed to the jury.

Q. I know you have told the jury about all of the boxes that you personally have any knowledge of?

A. That's correct.

Q. And you did not mean to imply by that, Mr. Clager, that Mr. and Mrs. Friedberg didn't have boxes during the period you said they had no boxes, or thought they had no boxes?

A. I mean to imply that my check of the banks I had gone to revealed only the safe boxes which I have disclosed here in my testimony.

Q. But, Mr. Clager, to be perfectly fair about it, your testimony did leave an inference that there was a period there when Mr. and Mrs. Friedberg did not have safe deposit boxes?

A. Well, I have no record yet before me which indicates they had a box between, I think 1935 and 1941.

Q. Well, I understand correctly, Mr. Clager, that you are only testifying about the boxes that you personally investigated?

A. That is correct.

[fol. 454] Q. Now, there was considerable questioning, Mr. Clager, about this, what I characterized as an innocent error of \$250 in the net worth computation. Did you understand, Mr. Clager, when I was questioning you, that I was using that small error solely for the purpose of illustrating that any error in the figures, the net worth figures, would throw off the computation of the net worth statement?

Col. Windom: I object to that question.

The Court: Yes. Sustained.

Q. You made the statement that you could not determine if all the miscellaneous income was included in the return in redirect examination. Now, by that do you mean that you could not determine name by name? Is that what you meant, Mr. Clager?

A. I meant, further than that, I could not determine the income.

Q. Could you determine the amount?

A. No, I could not determine the amount.

Q. Well, you testified before that the figures compared favorably, didn't you, Mr. Clager?

A. I also testified they did not reconcile.

[fol. 455] Q. Yes, but——

A. I also stated, sir, that favorable is a matter of opinion.

Q. That is correct.

A. I don't know whether your impression of favorable is the same as mine.

Q. But I did ask you whether you considered these comparisons favorable and you did say you did.

A. In total, yes, but we cannot determine the source of these totals.

Q. Well, we will go back, we will attempt to clarify that, Mr. Clager. You referred to the D. Friedberg Loan entries as being false entries in your redirect examination. Do you mean false or erroneous?

A. If you will explain the difference between false and erroneous.

Q. I am glad you asked. A false entry is an entry which one deliberately makes wrong. That's what I mean by a false entry. An erroneous error or misnomer is when you call miscellaneous income D. Friedberg or D. Friedberg Loan or something else, just call it by the wrong name but the money is there. That's the difference between a false entry and an erroneous entry.

A. Do you want my opinion now?

Col. Windom: I object to the statement unless you qualify it to the effect that it is your statement.

Mr. Sillman: The witness has asked my definition of a false entry and I am just telling it.

Col. Windom: With the understanding it is Mr. Sillman's definition I withdraw the objection.

[fol. 456] Q. Well, let's have you, Mr. Clager, tell us whether the D. Friedberg Loan entries did in fact go into the work sheet. I will take you right back there where we started.

The Court: Didn't he testify to that yesterday?

Mr. Sillman: Yes, he did testify to that, Your Honor.

The Court: You were all over that yesterday. Is this repetitious?

Mr. Sillman: No, it is not repetitious, Your Honor, except to this extent. Yesterday he did testify to that, but

today he says he characterized that as being a false entry, and I am certain that the Court will not require me to leave the witness—

The Court: The Court is not circumscribing you except it does not want repetition of what we already had.

Mr. Sillman: To the extent this witness has given a different impression this morning than he did yesterday.

The Court: That may be your impression of what the witness has given. Go ahead with your examination.

By Mr. Sillman:

Q. You testified yesterday, and I am not going to repeat these figures, Mr. Clager, but for the years of '45, '46 and '47 you testified in detail as to the amount of income from retail sales and from wholesale sales which you took from the wholesale invoices and the retail from the order book, and you testified to the amounts of the Friedberg Loans, which I called miscellaneous income items, and you added those up and then you testified as to the total amounts which were shown by Mr. Friedberg on his income tax work [fol. 457] sheets. You recall that?

A. I recall that.

Q. Are you desirous or attempting to make any change in your statement to the jury this morning as against what you said on that subject yesterday?

A. I will make a statement.

Q. Are you changing any of those figures, I am asking?

A. No, I am not changing those figures. They are correct, to my best knowledge.

Q. Now, you said that you could not tell from the records whether the check from a customer could be traced into income; or, I think you said you couldn't trace it into income, is that correct?

A. I cannot tell you the way you have phrased that statement.

Q. I am just putting the answer as I got it down. You were asked whether on one of these Friedberg Loan deposits you could tell or trace the customer's check into income or on the income tax work sheets.

A. I could not trace a particular check onto Mr. Fried-

berg's work papers, and that's the way I testified yesterday.

Q. Now, will you just please get out the same illustration we had yesterday. I thought we did trace it.

A. We did not trace it. You only traced totals which we arrived at yesterday here in court. And if you have got this impression, you have the wrong impression and I want to correct it.

Q. Let's see whether the impression is right or wrong. Get the 19 (b) exhibit and your notation on the cash book entry. We will try to find out what you mean, Mr. [fol. 458] Clager. Now, do you have your memorandum of the cash book entry?

A. If you will give me the date I can refer to it quickly.

Q. May 16, 1947, and the check is the Walter Shapter check.

A. I have it here.

Q. We used that as an illustration. Now, you say you cannot trace the Walter Shapter check into Mr. Friedberg's income?

A. Into his income tax return, I cannot do that.

Q. Now, let us test that. The cash book entry of that date shows an entry of Michael Grippa \$81.50, doesn't it?

A. That's correct.

Q. And, it shows a D. Friedberg Loan item of \$400?

A. That is correct.

Q. You have already testified that the total of the D. Friedberg Loans, plus the retail sales income, plus wholesale sales income, was substantially the same as the amount shown on Mr. Friedberg's work sheets.

A. In total, sir, they are.

Q. That's right, in totals.

A. Yes.

Q. The work sheet does not list every customer's name in detail?

A. No, and this check wasn't on any of his records either, sir.

Q. We are going to see if it was ~~or~~ one of his records when we come to it. The work sheet does not list these customer's names in detail, does it?

A. It does not.

[fol. 459] Q. It only lists totals?

A. That's correct.

Q. Now, if the total amount of income shown on the work sheet compares favorably with the total amount of retail sales, wholesale sales and these Friedberg Loan items, then \$400, the particularly \$400 Friedberg Loan item was obviously included in the total figure?

A. No, it was not included obviously, because I could not determine the amount as to the income tax return, the gross income, as to how he arrived at that figure. You have arrived at a computation here before the Court, but I cannot testify that this check was included.

Q. Well, we will come to the check, Mr. Clager, if you will just be patient. Let's just take this step by step, please. You do admit, do you not, that the Friedberg Loan entries, the total amount, not in detail, but the total amount, plus the total amount of other income, retail sales and wholesale sales, compares favorably with the total amount shown on the income tax work sheets?

A. There is a figure here which we can use, if you care to show the difference. If it is within \$3,000, yes, and I have generally testified it would be favorable, depending upon interpretation of favorable.

Q. And the \$3,000 error, you testified, was in favor of the Government?

A. And, when somebody reports income in favor of the Government, we want to see why.

Q. It was there, it was an error. They do make refunds sometime, don't they?

[fol. 460] A. Yes.

Q. Now, if that total amount shown on the income tax work sheet was more than the total amounts on the book, there couldn't be any question but what this specific item of \$400 was part of that total amount?

A. It depends entirely how the taxpayer prepared this total, not on how you prepared it.

Q. Now, Mr. Clager, isn't what you are saying to me this, that if you take all of these pages here and add up all the amounts, and the total amount compares to what's in the income tax work sheet, you are telling me that you can't tell from that whether a particular entry here went into the work sheet; isn't that what you are saying?

A. I can't even tell whether he used that particular book which he used to arrive at that total, unless it reconciles.

Q. But, you do know that the figures compare favorably and in some instances, in some of these years, as you have indicated, if there was an error it was in favor of the Government? You know that, don't you?

A. Based on the figures, yes, which you have given me yesterday and today.

Q. Now, then, when you go to the deposit slip for May 16, 1947—turn to that, please.

A. I have it.

Q. You have on the deposit slip a figure of \$81.50, correct?

A. That's correct.

Q. And you have the name of Grippa?

A. Yes.

[fol. 461] Q. Now, that happened to be one that was entered in detail in the cash book?

A. That is correct.

Q. And, then, instead of having D. Friedberg on the deposit slip—on the deposit slip you do not have the heading D. Friedberg or D. Friedberg Loan, do you?

A. I do not.

Q. But instead of that you have four checks, don't you?

A. No.

Q. Three?

A. I have three checks.

Q. And the three checks total \$400?

A. No, they do not.

Q. The three checks and the cash?

A. The three checks and the cash total \$481.50.

Q. Let's separate that just a moment. You have a check for \$81.50.

A. Yes.

Q. And, that has the name of Grippa?

A. That has.

Q. And that corresponds with an entry on May 16, Michael Grippa, \$81.50, in the cash book?

A. That is correct.

Q. Now, just list off everything else on that deposit slip except the one you just testified to.

[fol. 462] A. The other items outside of the Grippa check is currency of \$65.97.

Q. Go ahead.

A. Check for \$179.53 with the notation Buckeye, check for \$154.50, notation Shapter, and that totals \$400.

Q. That's the point. You have on that deposit slip, Mr. Clager, the same Michael Grippa, \$81.50, that appears in the cash book?

A. Yes.

Q. But instead of having on the deposit slip D. Friedberg \$400, you have cash, Buckeye, Shapter, three items which total \$400?

A. That is correct.

Q. Now, are you telling this jury that you cannot say from that fact that that Shapter check went into the bank account and into the work sheet of the taxpayer?

A. Oh, I can tell you it went into the bank account. I cannot testify to it. I have no knowledge that it went into it. There are no papers available.

Q. You say you cannot testify from this demonstration that that went into the work sheet?

A. No, I can testify it went into your figures which we prepared yesterday, but I cannot testify it went into Mr. Friedberg's work papers which he gave to his accountant.

Q. Now, Mr. Clager, I didn't prepare any figures. I asked you for figures and you have testified today that you are not changing those figures.

A. Absolutely not.

[fol. 463] Q. Do you now want to change them?

A. No.

The Court: Isn't this all repetition, Mr. Sillman. Were you not all over these checks and the aggregate amount? There is no objection but it seems to the Court we are merely losing time by repeating what has already been placed before the Court and jury. If you have anything different to inquire I will permit you to do so.

Mr. Sillman: I want to be sure the testimony hasn't changed.

The Court: There is no need of reiterating what the wit-

ness has already testified to. If you have anything else along that line you may interrogate him.

Q. I want to ask you just one more question, Mr. Clager. Did Mr. and Mrs. Friedberg ever tell you that they advanced money to the business?

A. Mr. Friedberg told me that.

Q. Did he ever tell you that some of those advances were entered in the D. Friedberg Loan entries?

A. Mr. Friedberg advised me that the entries marked Loan—D. Friedberg or D. Friedberg represented funds which he had taken from his safe deposit box, currency, placed in the business to use as working capital. That was the explanation given to me during the investigation.

Q. I believe you testified yesterday that you did not add up the total receipt items in the cash journal to arrive at the figures which you gave me?

A. I have a total of the cash receipts journal.

Q. Well, yesterday you told me that you took the wholesale sales from the wholesale invoices, didn't you?

[fol. 464] A. I did that also.

Q. Well, I asked you yesterday whether the wholesale sales invoices compared with the entries in the cash book, and I thought you told me—

A. The cash book did not differentiate between wholesale and retail.

Q. You couldn't do that?

A. That's right. The information wasn't there.

Q. Mr. Friedberg, at least, did tell you that money was loaned to the business?

A. He did.

Mr. Sillman: That's all.

Redirect examination.

By Col. Windom:

Q. Mr. Clager, these cash books that you have been examined about, I ask you whether or not they purported to list in detail all sales?

A. Yes, they did.

Q. Did they, in fact, actually list all known sales in detail?

A. They did not.

Col. Windom: That's all.

[fol. 465] Redirect examination.

By Col. Windom:

Q. I did overlook one other question. If my recollection is correct, you have testified that the defendant had no, speaking prior to today, safety deposit box between March 14, 1935 and May 2, 1941, is that correct?

A. That is correct. I found no box during that period.

Q. Has the information supplied to you by Mr. Sillman this morning changed that in any respect?

A. It has not changed my belief.

Col. Windom: That is all.

Mr. Sillman: Of course, we haven't gone over all the boxes because he doesn't know.

Col. Windom: Object.

The Court: Yes.

Col. Windom: It may be stipulated that under the laws of the United States the documentary stamp upon deeds and other documents requiring them was 50 cents on each \$500 of value between the years 1918 and 1926; that between 1926 and June 21, 1932 no tax was required; from June 21, 1932 to July 1, 1940 the tax stamps required was 50 cents on each \$500; after July 1, 1940 the law requires [fols. 466-467] tax stamps of 55 cents on each \$500 to be affixed to such deeds or fraction thereof.

The Court: Is it so stipulated and agreed?

Mr. Sillman: Oh, yes. I haven't check-- it but I assume that is correct, of course.

Col. Windom: Mr. Nerny, please.

The Court: Let the record show that this witness has heretofore been sworn and has testified.

THOMAS J. NERNY, recalled to the stand, was examined and testified further as follows:

Direct examination.

By Col. Windom:

Q. Mr. Nerny, you have heretofore been sworn in this case?

A. I have, sir.

[fol. 468] Q. Mr. Nerny, based upon Exhibits 1 (b), (c), (d) and (e), which have been stipulated to be Mr. Friedberg's income tax returns for the years '44, '45, '46 and '47, will you give me first the reported income for each year, then the computed income upon the net worth basis, based upon Government's Exhibit No. 2, then the tax computed by Mr. Friedberg on his returns each year, then the tax as it would be based upon the computations in Government's Exhibit No. 2?

A. For the year 1944 the income as shown on the taxpayer's return was \$2735.97. The income shown on our computation for the same year 1944, \$16,140.68. The tax computed by the taxpayer for 1944 is \$152.00. The tax computation on our income, \$4559.71.

For the year 1945 the taxpayer reported an income of \$2012.36. Our computation of income shows \$22,169.18. [fol. 469] The tax computed by the taxpayer, \$39.00. Our tax computation, \$7694.21.

For the year 1946 the taxpayer's return indicated \$4943.93. Our income computation, \$23,035.34. Taxpayer's computation of tax for the year '46, \$470. The tax computation based on our income, \$7447.80.

For the year 1947 taxpayer's return indicates income of \$7723.05. Our income figure shows \$42,276.91. Tax liability shown by the taxpayer's '47 return is \$1355.57. The tax computed on the basis of our income, \$19,590.02.

Q. Mr. Nerny, I will ask you whether you have allowed the standard deduction of \$500 in computing the tax each year?

A. That deduction was allowed in all four years, sir.

Col. Windom: Cross examine.

Cross examination.

By Mr. Sillman:

Q. Mr. Nerny, your figures of the reported net income were in fact taken from the taxpayer's income tax return for the year in question?

A. That is right, as filed by him.

Q. You took your figures from those returns?

A. That's right, sir.

Q. Now, the computation of the tax based on the taxable income shown in the taxpayer's income tax return you took that from the returns, too, didn't you?

A. That is right, sir.

Q. Now, on the other side, you made computations (fol. 470) from alleged payments of income, and those figures you got from the net worth statement that Mr. Clager prepared?

A. That is right, sir.

Q. You did not prepare that statement?

A. I assisted Mr. Clager in the preparation.

Q. Mr. Clager, I understand, prepared it.

A. That is possible, sir.

Q. Now, the figures that you used in this latter computation are arbitrary figures, are they not?

A. I don't know what you mean by arbitrary.

Q. Well, they are based on certain assumptions, are not? No cash, for example, at the start.

A. I don't believe there was any cash in the net worth statement.

Q. Well, I say, this entire net worth computation is based on an assumption that there was no cash at the beginning.

A. There is no evidence of any cash at the beginning from our standpoint.

Q. And the net worth computation is based on the assumption?

A. I believe so.

Q. That is just an assumption, isn't it?

A. Not from my part, sir.

Q. Well, you have made some investigation and you have some reasons for making such an assumption, and

Clager has testified to reasons, but it is after all an assumption?

A. In the absence of any indication that there is any [fol. 471] cash, I don't think we could make an assumption that there was.

Q. What I am asking, in a different way, is simply this. You went into Mr. Friedberg's box in October 10, 1947, didn't you?

A. That's right.

Q. And, of course, you and Mr. Curtis, in Mr. Friedberg's presence, actually counted the cash?

A. We did.

Q. So you do know how much cash was in the box at that time?

A. Yes, sir.

Q. Now, when it came time to make up this net worth statement, you used the figure of \$14,842.36 as being cash on hand December 31, 1947?

A. That's right, sir.

Q. Have you got it open in front of you?

A. What figure did you give me, sir?

Q. Cash on hand at December 31, 1947, \$14,482.36.

A. That's right, sir.

Q. Now, on October 10 when you actually counted the cash, I mean physically counted it, there was \$19,600, wasn't there?

A. That's right, sir.

Q. And you determined that Mr. Friedberg purchased a bond which is listed down here under the heading "Securities, \$4757.54, and therefore, included that in the net worth statement?

A. That's right, sir.

Q. That's the D & H Bond, Delaware and Hudson. You recall that?

A. I recall that.

[fol. 472] Q. Now, the total of those figures; that is, \$4757.54, his bond, on hand December 31, 1947, plus the amount of cash that Mr. Clager included in this net worth statement, totals \$19,600. I think it is a couple pennies off. It is \$19,600, isn't it?

A. That's right.

Q. Probably two cents off.

A. I think it is ten cents off.

Q. Well, we will call it \$19,600. So that, in arriving at those figures, Mr. Clager in preparing this assumed that out of \$19,600, which was in fact in the box on October 10, 1947, Mr. Friedberg used \$757.54 of that to buy a bond, didn't he?

Col. Windom: I object. That is an assumption. He is asking him what Mr. Clager assumes.

The Court: Sustained. He has no right to testify as to what Mr. Clager assumed.

Q. You say you assisted Mr. Clager. Did you make that assumption?

A. I don't remember, sir.

Q. Can you explain to this jury how you went in any other way—can you explain to this jury how you went into the box on October 10, counted the cash and found \$19,600, and then when the net worth statement was made up a few months later, December 31, 1947, you gave credit for only \$14,482?

A. I believe, sir, that we could find no indication where the bonds were purchased by check and we had to determine [fol. 473] that the amount must have been purchased from the cash in the box.

Q. That's exactly what I asked you. You assumed that he had used that cash that you had counted to buy that bond?

A. Beyond a reasonable doubt, I presume we would have assumed that.

Q. That's the reason you deducted the amount of the bond, instead of showing \$19,600 you only showed \$14,000?

A. We thought that was fair in the interest of the taxpayer.

Q. I didn't ask whether you thought it was fair. That was an assumption on your part?

A. It could have been.

Q. Do you have the records of when those bonds were purchased in 1947?

A. In the year '47, sir?

Q. Yes.

A. I have some in my notes, I believe.

Q. I beg your pardon?

A. I believe I do, sir.

Q. And, the total amount of bonds purchased in 1947 was \$20,000, wasn't it?

A. I believe that to be true, sir.

Q. Do you have—and take your time; it may be in the records over here—do you have the dates on which those bonds were purchased? I may say, Mr. Nerny, that if Mr. Clager is more familiar with these figures than you are—[fol. 474] A. I have some dates here.

Q. —you needn't be ashamed.

A. I am not ashamed, but I have some dates here.

Q. If you don't have the figures I don't want to take advantage of you.

A. As far as my records are concerned, there were \$5,000 worth of bonds purchased on February 8, 1947, \$5,000 worth of bonds purchased on 3/31/47, \$5,000 worth on 6/9/57, and \$5,000 worth on 9/8/47.

Q. We will just take those one by one. The first bond was purchased on—what was that date?

A. February 8, I believe.

Q. And the second in March?

A. It looks like March 31, sir. This is a carbon copy.

Q. March 1 or 31?

A. It looks like March 31. It could be either 21st or 31st. I believe it is the 31st.

Q. And the next one was purchased on?

A. June 9, 1947.

Q. And the next one on?

A. There were five \$1000 bonds purchased on September 8, 1947.

Q. In this net worth computation, Mr. Nerny, the net worth increases that were computed in this exhibit of the Government are largely due to the bond purchases, are they not?

A. In the later years, sir, yes, sir.

Q. In other words, not figuring it down to the penny, but the bank account increases substantially cancel off, do they not, in the later years, and the net worth increases [fol. 475] may be said to be due almost entirely to the bond purchases; isn't that right?

A. To a great degree, sir.

Q. Now, if Mr. Friedberg, in fact, made \$5000 during the year of 1947 to buy a \$5,000 bond on February 8, he would have had to make that income by February 8, wouldn't he?

A. You mean if he purchased it from profits in '47?

Q. Yes, that's right. He would have had to have earned it.

A. If it was paid out of '47 funds.

Q. Now, your net worth increases here claim that these increases represent taxable income, do they not? That's your theory.

A. That's our computation.

Q. For the same year, for '47?

A. That's right, sir.

Q. So that if that were true, it would necessarily follow that if Mr. Friedberg bought a bond on February 8 for \$5000 he would have to pay for it, wouldn't he? That's point one.

A. I don't believe they are free.

Q. I wasn't attempting to be facetious. You can't buy them on a credit basis?

A. I don't believe so.

Q. You have to pay cash. And, if he had to pay cash he would have had to have the money to pay it, wouldn't he?

A. That's right.

Q. And if that money was current income earned in 1947 [fol. 476] he would have had to have earned it at the time he spent it, by that time, is that right?

A. To come out of '47 earnings.

Q. So that we would start, if your computations were correct—Mr. Friedberg would have had to make, would have had to have an income of at least \$5,000 by February 8 when he bought his first bond. That's right, isn't it?

A. Yes.

Q. That would have been income that he made from January 1, 1947 to February 8; that's right, isn't it?

A. That's right.

Q. So that in one month's time, according to your computations, Mr. Friedberg would have had to make \$5,000, is that right?

A. Correct; the way we have handled it.

Q. I can't hear you.

A. That's the correct way we have to put the bond, in the year in which they are purchased.

Q. So, according to this computation, Mr. Friedberg would have had to make \$5,000 between January 1, 1947 and February 8, 1947.

Now, the next bond was purchased on March 31. That's approximately a month and a half later, isn't it?

A. Close to that.

Q. So if he bought another bond on March 31, he would have had to have earned and had income of another \$5,000 in that month and a half, because he used the first five, is that right?

[fol. 477] A. If purchased out of earnings.

Q. You claim they were purchased out of current income.

A. We must identify the bonds in the year of purchase. We have no other way of allocation.

Q. The net worth statement claims that these bonds were purchased out of income he made in 1947.

A. I don't think the net worth statement makes any allegation to that effect.

Q. That's the purport.

A. To identify income as acquired or purchased by the taxpayer.

Q. We are claiming the bonds were purchased out of accumulated savings.

Now, the next purchase was made for \$5,000 on March 31. You have said that that would fall in the same class. He would have had to make another \$5,000 in a month and a half. That's 10,000 by March 31, which is the first three months of the year.

The next purchase was made on June 9. That was for \$5,000, wasn't it?

A. Yes.

Q. So he would have had to have made and had income in '47 of an additional \$5,000 between the last purchase, March 31, and June 9, is that correct?

A. To follow your reasoning, yes, sir.

Q. And, the last purchase was made on September 8 of '47—

A. Correct.

[fol. 478] Q. —in a series of \$1,000 bonds, totaling \$5,000, all purchased on one day?

A. That's right.

Q. So that between June 9, the last purchase, the preceding purchase, and September 8, he would have had to have made another \$5,000 income; that's correct, isn't it?

A. That's right.

The Court: You may explain your answer if you desire.

The Witness: I attempted to qualify that by saying that the only possible way we can determine assets is to put them in the year of acquisition.

Q. So that's just an assumption, isn't it?

A. It is not an assumption. It is a matter of fact. If the bond is purchased in '47, we couldn't put it back in '46 as an asset. The net worth statement is a declaration of assets and liabilities as acquired.

Q. I appreciate that. If the taxpayer purchased the bond in '47, and we have the exact dates, he either paid for that out of income that he made during the year of '47 or he paid for that bond out of income he made in prior years or accumulated savings over many years. It had to come from some of those sources?

A. One of those sources, yes, sir.

Q. Now, Mr. Nerny, it is our theory that the taxpayer purchased these bonds out of prior accumulated savings. You understand that?

A. That's your theory.

Q. And it is your theory, or rather, the prosecution's [fol. 479] theory, not your personal theory, in this net worth statement that these bonds were purchased in '47 were purchased out of income made in 1947. That's right, isn't it?

A. That's—

Q. And if they were purchased out of income made in '47, the income would have to have been made by the time the bond was purchased, if that was true, isn't that right?

A. Yes, sir.

Q. All right. Now, we have gone through all of these. We won't repeat them. Then, of course, if that represents

the net worth increase, apparently this business made nothing else for the rest of the year. You haven't disclosed anything else.

A. What is the amount of the net increase, \$40,000?

Q. I don't know. I am taking the bonds themselves.

A. Are you directing a question, sir? I didn't quite understand how you were phrasing your question.

Q. I will put it this way, that if these bonds were purchased out of current 1947 income, that amount of money would have to have been made in 1947 sometime prior to and up to the time that each bond was purchased?

A. That is correct.

The Court: Due to other commitments this case will have to be continued until tomorrow morning at ten o'clock. (The Court gave the same instructions to the jury as heretofore given.)

(A recess was taken until December 20, 1951 at ten o'clock a.m.)

[fol. 480] THURSDAY MORNING SESSION

December 20, 1951

THOMAS J. NERNY, resuming the stand, was examined and testified further as follows:

Cross examination (Cont'd.).

By Mr. Sillman:

Q. Mr. Nerny, will you turn to your records and give us the purchase dates of the bonds which were purchased in the year of 1945. To refresh your recollection there were \$30,000 total, \$31,000, I think.

A. I have on May 18, 1945, \$5000; May 28, 1945, \$5000; again on May 28, 1945, \$5000; June 22, 1945, \$5000; July 3, 1945, \$6000; November 5, 1945, \$5000; June, \$1000 E Bond, purchase price \$750; May, \$1000 C. Bond, purchase price \$750.

Q. In other words, the bonds purchased in the year of

1945, with the single exception of the one purchased in November, were all purchased the first half of the year, in May or June?

A. I think the issue date on the bonds was June 1, 1945.

Q. But I say, they were purchased during the first half of the year, in May or June?

A. In May or June, with the exception of the one July 3, sir.

Q. Do you, Mr. Nerny, have a record of the date the account was opened in the Dollar Federal Savings and Loan, Account No. 3280, and the next one, Account No. 3303, in the same bank, each for \$6000?

A. 3280, did you say, sir?

[fol. 481] Q. Yes, sir.

A. I have an Account No. 3280. The initial deposit was June 26 of 1947.

Q. What was the amount of this deposit?

A. \$500.

Q. What was the next deposit?

A. I have a deposit on July 2 of \$3500.

Q. And the next one?

A. I have one of September 18 of \$2000.

Q. Take the next Dollar Federal Savings and Loan account—I should say the other one.

A. Well, I have one 3303. Is that the one you refer to?

A. I have an opening deposit of \$5000 on July 2.

Q. When was the next deposit in that account?

A. I have one November 21 of \$1000.

Mr. Sillman: That is all.

Col. Windom: That is all, Mr. Nerny.

Mr. Clager, will you take the stand, please.

FRANCIS J. CLAGER, recalled to the stand, was examined and testified as follows:

Direct examination.

By Col. Windom:

Q. Mr. Clager, the issue of the purchase of the Government bonds having arisen, will you start with the year

1924 and give us in detail the bonds purchased by Mr. Friedberg, and insofar as you are able, the source of [fol. 482] the money used to purchase the bonds, for each year '42 through '47.

A. Included in the Exhibit 2 were bonds purchased during 1942 in the amount of \$150. They consisted of five bonds, four of them costing \$18.75 and the fifth one at a cost of \$75.00. They were Series E. Bonds.

Q. What dates were they purchased on?

A. Why, I can only give you the month they were acquired.

Q. That's good enough.

A. In January there were two bonds acquired costing \$18.75 each, and in January there was also a bond acquired costing \$75.00. There was a bond purchased in June costing \$18.75, and the last bond was purchased in December costing \$18.75. That accounts for the bond acquisitions during 1942.

Q. Give us 1943, please.

A. During 1943 the taxpayer purchased \$3,412.50.

Mr. Sillman: May I ask, the exhibits that you marked 2N and 2-U—I don't recall, but are those the exhibits that list all of these purchases and dates?

Col. Windom: Mr. Sauer tells me that 2-N is the Vercoee Company account and 2-U is the Market Exchange—

Mr. Sillman: I thought perhaps there was a list here.

A. The bonds acquired during 1943 were at a cost of \$3412.50. In April four bonds were acquired as follows: A bond for \$18.75, another bond costing \$18.75, a third bond costing \$37.50, and the fourth bond costing \$37.50.

In November 1943 the taxpayer purchased a bond in the [fol. 483] amount of \$18.75.

In December he purchased bonds, Series E bonds, totaling \$3225.00, consisting of the following bonds: A bond in the amount of \$75.00, a bond in the amount of \$18.75, a bond in the amount of \$37.50, a bond in the amount of \$75.00, a bond in the amount of \$18.75, and four bonds costing \$75.00 each. These were all Series E bonds and they were all acquired through the Ohio National Bank, at which bank

the taxpayer maintained his checking account for his tailoring business.

Investigation has disclosed that in December of 1943, the month in which he acquired these bonds there was a charge to his checking account in the amount of \$3200, which would be the cost within \$25.00 of these bonds. In other words, they were paid for through his checking account at the bank in which they were acquired.

Other bonds in addition to this——

Mr. Sillman: If the Court please, I am going to object to the conclusion of the witness. That's a pure conclusion.

The Court: Sustained. Unless you have knowledge how they were paid for, you can only testify as to the facts, as to what the records show.

A. In addition to the bonds I have just mentioned, there were also two other bonds in the amount of \$18.75 acquired in December from the F. & R. Lazarus Company. During the year 1944 taxpayer acquired the following Series E bonds, or Savings Bonds, as they are known. In January, 2 bonds in the amount of \$18.75, F. & R. Lazarus and Company, Columbus. In February, one bond in the amount of [fol. 484] \$18.75 through the F. & R. Lazarus and Company. Another bond in the amount of \$18.75 in November of 1944 from the F. & R. Lazarus and Company.

In addition, he acquired the following bonds during November through the Ohio National Bank, Columbus, Ohio: four bonds in the amount of \$750 each and eight bonds costing \$75.00. The total cost of these bonds purchased during November at the Ohio National Bank was \$3600. During that same month there was a charge to his account of the same amount, \$3600. The canceled checks were not available. I had no evidence with which to tie those two figures in.

In addition, he purchased through the F. & R. Lazarus Company in Columbus during December nine bonds costing \$75.00 each, and the last bond in the amount of \$18.75 was also acquired through the F. & R. Lazarus and Company in December.

During the year 1945 the taxpayer acquired the following Series E. Bonds. One bond for \$18.75 in January through

F. & R. Lazarus, one bond in May 1945 costing \$750, one bond in June costing \$750, both through F. & R. Lazarus Company, Columbus, and a bond in November costing \$18.75 from F. & R. Lazarus Company, and one bond in December of \$18.75 from F. & R. Lazarus and Company, which makes a total of five bonds, three of which were \$18.75 and two were \$750 bonds. I was unable to trace the funds, where these funds would have come from.

In addition, during 1945, the taxpayer purchased \$31,000 worth of coupon bonds.

The Court: In what year?

A. During the year 1945, \$31,000 of coupon bonds. I may [fol. 485] explain to you, perhaps, that coupon bonds have attached to them little coupons on which the holder submits to banks and receives his interest in that manner, whereas the Series G bonds the Government issues a check to him and it is on record. They have a record that he owns those bonds.

The first acquisition of these \$31,000 occurred on May 18 of '45 when he made application at the Market Exchange Bank, Columbus, Ohio, in the name of D. F. or F. F. Handler. The cost of these bonds was \$5000. They were paid for as The First Federal Savings and Loan issued their check No. CA 4616 dated May 15, 1945, and it was payable to F. F. Handler, in the amount of \$3900. It has been submitted in evidence during the trial. The balance of the cost of these bonds of \$1100 was from an unknown source. However, there was a safe box entry on the date he made application for these bonds, on which date he would have to put up the funds. The box was entered by David Friedberg, according to the box entry card which I examined.

On May 28, 1945 the taxpayer purchased through the Buckeye State Building and Loan Company, Columbus, Ohio, \$5000 worth of bonds. The following is a record of the source of these funds, as far as my investigation disclosed. Examination of the taxpayer's savings account at that bank revealed a withdrawal from the account of \$3600 on the date application was made for the \$5000 bonds. The balance of \$1400 of the cost if of unknown origin. There was an entry in the taxpayer's safe deposit box on the date

he applied for these bonds, being May 28 of '45, and it was made by David Friedberg, according to the records I examined. On the same date, May 28, 1945, the taxpayer purchased through Vercoe and Company, through [fol. 486] the account of A. Wayne Friedberg, who is his son, \$5000 coupon bonds. There were no withdrawals from the bank account for bonds on that day. The taxpayer did, however, enter his safe deposit box on the same date he applied for these bonds at Vercoe and Company, and the \$5000 has never been traced.

On June 22, 1945 the taxpayer again purchased \$5000 of coupon bonds from Vercoe and Company, and the following is the method in which he—or, the source of the funds, as investigation disclosed. The taxpayer sold securities he owned in the following corporations: Best Foods, Bridgeport Brass and Marine Midland. He received for these bonds, which were included in the net worth statement, \$3023.90, which was used to offset the cost of the bonds which he was purchasing. In addition, the taxpayer made the following deposits on this brokerage account: June 21, 1945, which is the date prior to his application for the bonds, \$1500. There was an entry in his safe deposit box on that same day made by David—that is, the card was signed David Handler, and since has been shown to be David Friedberg. Also on June 22, the day on which he applied for these bonds, he made additional deposit of \$483.24, which covered the complete cost of those bonds.

On June 28, 1945 the taxpayer purchased through the First Federal Savings and Loan Association \$6000 in coupon bonds. At the First Federal Savings and Loan Association he had the account 8070 in the name of D. F. or F. F. Handler, and from this account there was a withdrawal of \$6012.24, and the withdrawal date is July 3, 1945. The balance in the account at that time was \$1.00, after the withdrawal of these funds. I might mention [fol. 487] that the \$12.24, there would be an accrued interest on these bonds if he purchased them after the issue date, which was June 15, and he applied for it on June 28, so that would account for the variation.

The last bonds purchased by the taxpayer in 1945 was on November 15. He purchased them at Vercoe and Company

in the amount of \$5000 and they were coupon bonds. Investigation revealed that there was a check issued by First Federal Savings and Loan Association, their check CA 6873. It was dated the same date on which he had applied for the bonds, in the amount of \$3700. It was payable to F. F. Handler, which was the name the account was registered in. The balance of \$1300, representing the cost of these bonds, was from an unknown source. However, there was an entry in his safe deposit box at the Market Exchange Bank in the name of Handler on the same date he applied for these bonds, being November 15 of '45.

During the year 1946 the taxpayer acquired no Series E bonds, but he did purchase two \$5000 bonds through the Huntington National Bank of Columbus, as follows: Application was made on July 2, 1946 at the Huntington National Bank for \$5000 Series E bond, which was an interest bearing bond and the interest would be paid directly to Mr. Friedberg by check drawn on the U. S. Treasurer. Source of this \$5000 to purchase the bond was from an unknown origin. Records of the safe deposit box at the Market Exchange Bank in the name of D. F. or F. F. Handler revealed that on July 2, 1946, the date on which he made application for these bonds, that David Handler, or Friedberg, had entered the box.

The second bond of \$5000 was purchased by application [fol. 488] of July 15, 1946 at the Huntington National Bank in the amount of \$5000. The account at the First Federal Savings and Loan Association, No. 8070, in the name of D. F. or F. F. Handler, revealed that \$350 withdrawal was made from that account on the same date application was made for the bond. Records at this Savings and Loan Association further revealed that the Association issued their check No. CA 10932 dated 7/15/46 to F. F. Handler in the amount of \$5000 and it was endorsed F. F. Handler and further endorsed Mrs. Frances F. Friedberg, and endorsements showed it cleared through the Huntington National Bank, American Banker Association No. 25-2, the designation of the Huntington National. The source of the funds in excess of \$350, which was withdrawn from this account 8070, or \$4650, was from an unknown origin. However, there was a safe deposit box entry at the Market

Exchange Bank the same day by David Handler, as she by the deposit records, safe deposit records.

Taxpayer during 1947 acquired four \$5000—well, actually made three acquisitions of bonds, each of them being \$5000, but they were in \$1000 denominations. The first acquisition was at the Huntington National Bank February 8, 1947, in the amount of \$5000. The source of pay for these funds is of unknown origin. There was a safe box entry on that date, February 8, 1947. There was one on February 7, the day prior to the application.

The second acquisition of bonds was on March 31, 1947, through the Huntington National Bank of Columbus in the amount of \$5000. Source is of unknown origin. There was a safe deposit box entry at the Market Exchange Bank on the same date, March 31, 1947, by David Handler, [fol. 489] shown by the records to be David Handler.

The third acquisition of bonds was at the Huntington National Bank on June 9, 1947 in the amount of \$5000. These were Series G bonds, as the other two were. The source of the \$5000 purchase of bonds on that day would be as follows. There was a check drawn on the taxpayer's checking account, Buckeye Tailoring Company account at the Ohio National Bank, No. 6458, dated 6/6/47. It was issued in the amount of \$3294. The balance of \$1706 was from an unknown origin. The last entry in the taxpayer's safe deposit box was on April 10, approximately two months prior to the purchase of these bonds.

The last acquisition of bonds in the amount of \$5000 was from the Vercoe and Company, Columbus, stock broker on September 8, 1947. These bonds were five \$1000 Series G bonds. I may have given the wrong impression on the first three bonds I have discussed. These were \$5000 bonds, there were only three of them. They were all purchased through the Huntington National. These bonds purchased by Vercoe were five separate bonds of \$1000 each, and they were paid for as follows, as shown by Vercoe Company account. There was a deposit of \$1000 to the account of A. Wayne Friedberg at Vercoe and Company on December 17 of 1946, and this balance of \$1000 remained through the rest of the balance of the year and credit was given on the net worth statement we have submitted to the Court for

balance of \$1000 to his account. The next credit to the account which was used to pay for these bonds was on August 25, 1947 in the amount of \$4000. There was no safe deposit box entry on this date, as shown by my examination of that card.

[fol. 490] On September 8, 1947 there was a final deposit with the Vercoe and Company of \$182.66. There was no box entry on this date. When he purchased this bond there was also interest due on it, accrued interest, and a premium was paid for the bond. It was purchased \$103; that is \$100 being par and he paid \$103 at that rate.

That accounts for his acquisition of bonds, to my knowledge.

Q. Mr. Clager, go through each year, '42 to '47, and give us the total amount of all bonds purchased of all denominations, just a single figure for each year.

A. During the year 1942 the taxpayer acquired \$150, cost, in Series E bonds. Did you want the total he had?

Q. The total purchased in each year, based upon his acquisition cost.

A. I will have to work the figure up as I go along.

During 1943 the record shows he acquired \$3412.50 worth of bonds. During 1944 he acquired Series E bonds in the amount of \$4368.75. During the year 1945 taxpayer acquired Series E and coupon bonds in the amount of \$32,556.25. During 1946 his only acquisitions were two \$10,000 in Series G bonds. During 1947 his only acquisition was \$20,000 in Series G bonds.

Q. I will ask you whether or not you have included the securities other than Government bonds?

A. I have not included in my figures I gave you, no, sir. These were just Government bonds.

Q. Give me the total for 1944 again, please.
[fol. 491] A. \$4368.75.

Q. What were his purchases of other securities other than Government bonds in the years '42 to '47?

A. During the years 1942, '43, '44, '45, '46 there were no acquisitions of securities—I will have to stop on that one. At the end of the year there were no acquisitions. I will have to refer to my transcript of the Vercoe and Company

account if I were to give you any transactions which may have occurred during the year.

During 1945, in February, he purchased Bridgeport Brass stock and sold Amalgamated Leather.

Mr. Sillman: May I interrupt a moment to ask if all of those figures that the witness is now proposing to testify to are on the Vercor Company account that is in evidence?

A. They are on the ledger account which is in evidence here.

That was the only purchase or disposition of stock, except one other purchase in 1947 of the Delaware and Hudson Railway. The record shows that on October 20, 1947 the taxpayer purchased five \$1000 bonds of Delaware and Hudson at four per cent interest, maturity date of 1963, at a price of \$93. The cost was \$4663.65 plus interest accrued at that date, and that payment was made for these securities on October 16, 1947.

Q. Is that all the other purchases?

A. That is the only—

Col. Windom: You may cross examine.

[fol. 492] Cross examination.

By Mr. Sillman:

Q. Mr. Clager, whenever you have testified that the source of the purchase was unknown, I take it what you mean to say to the jury is that it was unknown to you?

A. That is correct.

Q. You were unable to find—

A. That is correct.

Q. Now, whenever bonds were purchased and there were corresponding withdrawals from the savings account, you reflected that in the year end balance of the savings account as you made up your net worth computation, didn't you?

A. Well, I used the balance as shown by the bank, which in effect would be the same thing.

Q. Well, it would be one and the same thing?

A. Yes, sir.

Q. Just for one example here—before I ask that question. What that really amounts to is that you have given

the taxpayer credit for the amount of purchases that are made out of the savings bank by taking the bank's year end figure and using that year end figure in your net worth statement, is that correct?

A. Well, that is a little round about. I don't understand it.

Q. You used the year end balance as shown by the bank?

A. In my net worth statement, yes, sir.

Q. Those figures we have all conceded. So that if there [fol. 493] was more money in the bank during the year and part of the money was used to purchase a bond or bonds, you gave credit for that because you used the year end balance. You took that into account. Maybe I should use that expression instead of *say* give credit.

A. I still don't follow you, Mr. Sillman.

Q. I will try to make myself clear to you, Mr. Clager. The amount that was in the bank on December 31 of any year would not necessarily be the same amount that was in the bank on any other day in the year?

A. That is correct.

Q. And some other day, any day you might select throughout the year, there might have been more or less than that amount in the bank?

A. That's correct.

Q. Therefore, if you trace a check or if there was a check issued on a bank account or a withdrawal and cashier's check from a bank account, used to purchase a bond, you took that into consideration by using the year end balance of the bank account?

A. That is correct.

Q. Now, I used the phrase that you gave the taxpayer credit, but we will just say you took it into consideration.

A. It was a factor in determining his net worth.

Q. Now, in 1947—you can turn to your figures for these bond purchases. We will only use this one as an example. You referred to a purchase of three bonds for \$5000 and an entry in the safe deposit box—I am sorry, I am reading some other notes. You referred to a purchase of a [fol. 494] \$5000 bond in February, and you then said that there was an entry in the safe box the day before.

A. That is correct.

Q. Would that be any indication to you that the money used to purchase that bond might have come from the safe box?

A. Well, it would indicate to me that if he took the funds from the box, he had to have them in some other place over night. In other words, on the 7th if he took funds from the bank, they had to be some place during that night until he acquired the bonds.

Q. At any rate, you would probably conclude from that that money to purchase those bonds came from the safe box?

A. Well, I would be hesitant to conclude that because I myself wouldn't leave \$5000 at home in currency, but then—

Q. You might not do that, but you don't test all people by your own conduct, do you?

A. No, I do not.

Q. As a matter of credibility on that subject, haven't you frequently read in the paper where people sometimes die and there is just tremendous amounts of cash laying around the house?

Col. Windom: I object.

The Court: Sustained.

Q. Let's take the next one. If that is your conclusion on that, there was a bond for \$5000 purchased in March, and you said that there was an entry in the safe deposit box the same day there, is that correct, Mr. Clager?

[fol. 495] A. That is correct.

Q. Would you conclude from that, that the money used to buy that bond came from the safe deposit box because it happened to be the same day?

A. I would say you could make that conclusion.

Q. Now, if the February purchase, if the proceeds came from the box, and if the March purchase came from the box, you have, notwithstanding that, treated that as a net worth increase, entered into your net worth increase; treated it as income, put it that way?

A. Well, it is a factor in our net worth at the end of 1947.

Q. Well, that's how you arrived at what your computation of income was, isn't it?

A. On the net worth basis, without the actual record.

Q. Just for purpose of illustration, these two transactions are treated entirely differently than the situation where money is withdrawn from a bank to purchase a bond?

A. How do you mean, treated separately.

Q. You just told us when money is withdrawn from a bank, you took that into account by using the balance at the end of the year. That's how you took that factor.

A. That's a known factor; of course, that's the reason.

Q. But, you took it into consideration?

A. It is automatically taken into consideration. I don't have to do it.

Q. And, it is also a known factor, isn't it, that if a bond [fol. 496] is purchased by cash, by currency and not a bank account, that that's money just the same as money in the bank, isn't it?

A. It is.

Q. Just different forms?

A. That's right, harder to trace.

Q. One is currency and one is a credit in the bank, but we speak in terms of dollar amounts, don't we?

A. That's true.

Q. And, that's what we are speaking about in your net worth statement, in dollar amounts?

A. That's right.

Q. So that in the case where the dollar amounts came from a bank account, you took that into consideration, as you testified, by using the year end balance of the bank account?

A. Yes, that's the only basis you can use it.

Q. Now, the point I am making is, it is a fact, isn't it, that you did not take into consideration the probabilities, reasonable or otherwise, as you may see it, that cash came from the safe deposit box to purchase bonds. You didn't take that into consideration?

A. I considered the fact.

Q. You didn't show it.

A. That angle you might say, but there was no evidence from which I could base, putting a certain amount available to him at the year ending.

Q. Now, the point that I make, you did not show that on

[fol. 497] your net worth statement; that's not reflected in your net worth statement?

A. I reflected no currency ^{on} on hand at the end of 1946.

Col. Windom: The question of the statute relating to the Home Owners Loan Corporation arose earlier in the case. Your Honor ruled that the statute itself was the best evidence. I would like to read into evidence Section 1463 L, Title 12, U. S. Code.

The Court: Is there objection?

Mr. Sillman: I don't even know what it is about, but I don't have any serious objection to reading the statutes any time.

Col. Windom: Section 1463 L, Title 12, Home Owners Loan Act of 1933, reads as follows:

"No home mortgage or other obligation or lien shall be acquired by the Corporation under subsection (d) and no cash advance shall be made under subsection (f) unless the applicant was in involuntary default on June 13, 1933, with respect to the indebtedness on his real estate and is unable to carry or refund his present mortgage indebtedness: Provided, that the foregoing limitation shall not apply in any case in which it is specifically shown to the satisfaction of the Corporation that a default after such date was due to unemployment or to economic conditions or misfortune beyond the control of the applicant."

The Government offers in evidence Exhibit 8 (a), being [fol. 498] the carbon copy of the letter of September 6 written by Robert L. Mellman, Attorney for David Friedberg, to Mr. Edward T. Lombardo, Attorney for the Home Owners Loan Corporation.

Mr. Sillman: Of course, we have objected and we have argued that out.

The Court: What was the number of the other exhibit?

Col. Windom: 8 (b).

The Court: You are offering those at this time?

Col. Windom: I am offering 8 (a) right now.

The Court: The Court will reserve a ruling on the admissibility as it has heretofore done.

Col. Windom: If Your Honor please, I am right up

against the wall. I don't know whether I want to rest or not.

The Court: The Court will sustain the objection if you want a ruling at this time. The same ruling as to the other exhibit.

Col. Windom: May we have the exhibits copied in the record for record purposes?

The Court: Yes, you may make your record.

The objection to Exhibits 8 (a) and 8 (b) will be sustained.

[fol. 499] MOTION FOR JUDGMENT OF ACQUITTAL AND ARGUMENT THEREON

Mr. Platt: Defendant moves for judgment of acquittal at this time.

The Court: Do you desire to be heard orally?

Mr. Platt: We would like to be heard.

The Court: The Court will hear you.

Have you filed a memorandum supporting your motion?

Mr. Platt: That is it.

The Court: There is no necessity of repeating what you have in your memorandum. The Court will examine the memorandum. Do you desire to supplement your memorandum?

Mr. Platt: I don't believe, Your Honor, that I will add anything. I will be glad to summarize it.

The Court: You may do so.

Mr. Platt: The motion is based upon two points of law. The first one has to do with the right of the Government to compute or determine income at all on the arbitrary net worth basis. In order to make use of that arbitrary method the Government must necessarily establish the necessity for [fol. 500] the use of that method. The Internal Revenue provision, which we have cited, Section 41, authorizes the use of other methods when the books and records of the taxpayer are shown to be inadequate. In our memorandum we have attached at the end quotations from two Tax Court cases in support of the rule that in case there are books and records of the taxpayer which are not undermined by showing outside income from other sources or are otherwise unreliable, that the Government is not permitted to

use one of these arbitrary methods of determining income.

I won't say any more on that point because I think we have covered it in our two Tax Court cases which we have attached. They speak for themselves, and the cases which we have cited in the Sixth Circuit clearly indicate that that rule is recognized by the Courts and has been applied in criminal as well as civil cases, where, of course, the Government has a much heavier burden.

The second point which we are urging in support of our motion is a point with which Your Honor, I am sure, is familiar, that the Government must, in order to make a case at all on the so-called net worth expenditure basis, establish clearly and accurately, as the courts say, the basic net worth starting point of the defendant.

The Court: Is it your contention that there is no evidence in this record which would establish that fact?

Mr. Platt: I am certainly not saying that there is no circumstantial evidence.

The Court: Is there sufficient evidence to go to a jury to establish that fact?

[fol. 501] Mr. Platt: That is the point that we urge, that there is not sufficient evidence to go to the jury on starting point.

The Court: Will you be specific.

Mr. Platt: The starting point in this case relied upon by the Government, the inference that the defendant in this case had no cash at the beginning of these years, is based, as I understand it, upon these items of evidence. First, some insurance loans, loans on insurance policies in 1931, the fact that ten or eleven years before this period started the defendant borrowed and reborrowed on his insurance policies and repaid the loans. Second, the fact that in 1936 and 1937 the defendant was sued in the Municipal Court and that the sheriff returned an execution "no goods found." Thirdly, that there were two or three foreclosure actions in which properties owned by the defendant were involved.

Those are, I submit, evidence on which a very weak inference might be drawn in respect to the cash position of the defendant in 1943 at the close of 1943 and the beginning of 1944. The only evidence which is at all specific and

speaks in terms of dollars, the only evidence which is comparable in even a remote sense with the starting point, evidence which has been deemed sufficient in other cases to go to the jury, is Exhibit 7, a financial statement to the National Life Insurance Company of Vermont. I would like to read to the Court from Exhibit 7 some language which, I submit, completely undermines the effect of that statement.

In that statement made in support of an application for a mortgage, the defendant, the taxpayer, in a personal financial statement in October of 1939, under the heading [fol. 502]—"Personal Financial Statements" lists in answer to the item under "Property owned—(1) Bank accounts" the item "On hand \$150.00." Now, the purpose of that statement, of course, was to support a loan to show that the defendant had enough assets in addition to the property to be mortgaged to warrant the lending of the money on a safe basis.

The Court: The Court has not examined this exhibit. What does it show, in brief?

Mr. Platt: I have just read the only item of significance on the exhibit. "Property owned—(1) Bank accounts, \$150.00." I am pointing out that this exhibit, which is an application for a loan and is designed for the purpose of establishing that the defendant, or taxpayer, or applicant, had sufficient property to warrant the loan, that that particular exhibit or particular application would have been false in the eyes of the Insurance Company if it had overstated his income, his available assets, rather than understated his available assets. The thing that the applicant was concerned about when he signed that statement was not overstating his assets.

Now, that construction of the thing, of this exhibit, is borne out by the fine print which I am unable to read but which Mr. Sillman has read to me, down here at the bottom and immediately under the financial statement. There a warning is stated that if the applicant makes any statement knowing it to be false, or, and then it explains what it means, willfully overvalues any security, asset or income, then it is a criminal offense. The whole purport of that statement is to penalize and warn the applicant that

he must under no circumstances overvalue, overstate, the amount of his listed assets.

[fol. 503] The property in this particular case was presumably ample to support the loan. We don't have anything in the record on that, of course, but the thing that the applicant in this instance was concerned about was making sure that he put in enough and only enough of his assets to support the granting of the loan.

The Court: Assuming what you say to be true, insofar as the financial statement is concerned, what weight is to be attached to it insofar as the facts of this case are concerned?

Mr. Platt: The point is, Your Honor, that this is the only item of evidence in this case which speaks in terms of dollars in the pre 1944 period.

Mr. Sillman: Mr. Platt has expressed his difficulty in reading this. It is tough enough for me, and I don't want to inject myself into your argument, but I want to merely call attention to the fact that this personal financial statement is made up on a printed form, that the questions are printed, that space is left to fill in the amounts. And what Mr. Platt was referring to is the printed question "(1) Bank accounts" and that amount is filled in. And, then, under that is "(2) Other savings (Name of depository)" indicating that they asked questions about bank accounts and they have not asked any questions about funds in a safe box or funds at home. I just want to call the attention of the Court, because it would seem from the statement made that the question asked was in a general term and that the person filling out this application had written in bank accounts. That is not so.

The Court: Is it not only one circumstance in a chain of [fol. 504] circumstances and evidence?

Mr. Platt: Your Honor, there is other evidence, but it does not speak in terms of dollars or ceiling on dollars.

The Court: What about the net worth as established by the Government Agent?

Mr. Platt: The net worth at the start of the period admittedly is incomplete if the defendant had cash at the start of the period, and our whole concern is whether or not the Government has established clearly, has clearly and ac-

curately established that the defendant did have no cash at the start of this period. The only bit of evidence which speaks in terms of dollars in that whole prior period, as to which the Government is attempting to establish that the defendants had no cash, is this statement to the Life Insurance Company, which I have read and which I submit is undermined by its very purpose and by the warning at the bottom that the applicant must be very sure not to overstate his assets. Clearly he did, on our theory, understate his assets at that time.

The Court: But, Mr. Platt, is not that only one circumstance in a chain of circumstances and evidence in this case?

Mr. Platt: Your Honor, that is only one bit of evidence, but it is the strongest.

The Court: Are you ignoring all the other evidential facts as produced by the Government?

Mr. Platt: Let me just compare this case and the other evidential facts along with this one, all of which are, of course, to be taken into account.

[fol. 505] The Court: Before you do that, are you contending that the net worth method as established by the Government in this case, is not dependable for the reason that they haven't made a definite starting point established as reasonably accurate?

Mr. Platt: We are contending that, and for the reason that the Government has not succeeded in supporting its contention that the defendant had no cash at the start of this period.

Mr. Sillman: May I interject a moment? Will the Court permit me to read a sentence here? This is an informal way, and I apologize for this, but I just want to read—

The Court: Had you concluded, Mr. Platt?

If you have, the Court will hear Mr. Sillman.

Mr. Sillman: What I wanted to call attention to is one of the most recent cases, *Brodella vs. United States*, which is the Sixth Circuit Court case, which we cited in our memorandum, the memorandum that Mr. Platt prepared. And the key to that, as I see it, Your Honor, is simply this, as stated in the quotes here: "The Fenwick and Bryan cases hold that when the Government relies upon circum-

stances of increased net worth and expenditures in excess of reported income to establish income tax evasion, the basic net worth at the beginning of the tax year must be clearly and accurately established by competent evidence."

Now, that is the heart of the thing. Our position, if the Court please, is simply this. We recognize that the courts have, in the proper cases, accepted the net worth computation and permitted that to go to the jury. Now, we are not going to kid ourselves. We know and everybody knows, [fol. 506] and all of the courts have recognized, that that's nothing more nor less than circumstantial evidence. As one of the Circuit Court decisions says, it is very weak evidence, and it refers to it and characterizes it as very weak evidence at best, but at least it is circumstantial.

Now, the point, if it please Your Honor, is this. Here is a case which the Government is proposing to send to the jury upon circumstantial evidence, which has been characterized by the Circuit Court as, at best, weak evidence. The question then comes in, if this is a proper case in which such circumstantial evidence may go to the jury, then it stands or falls on its own weight. But the point is that this circumstantial evidence is not admissible in every case and it is admissible only in those cases in which the basic net worth at the beginning of the year is clearly and accurately established.

The Court: Now, I think your position, in view of the Fenwick and Bryan cases, is that in this case that the Government has not accurately established the basic net worth of the taxpayer at the start of the taxable year in question.

Mr. Sillman: That is correct. Mr. Platt, of course, has called attention to the only piece of evidence in the record that talks in terms of dollar amounts. There is just nothing else, just this one, and he has explained that. Here is the answer to these questions: "Bank accounts." There is a figure filled out. I don't know whether this statement can be called inaccurate, but for the sake of argument, if the witness is asked how much his bank account is, he isn't asked how much he has in his safety deposit box. But even if, for the sake of argument, we were to assume that [fol. 507] that statement was not correct, it in turn has been undermined by the very warning language in the state-

ment, which shows it is intended that the person not overstate what he has got, and it doesn't make much difference if he understates it.

The Court: Are you not confining your argument to the purport of the statement, the intent and purpose of the statement made by the party, and ignoring the bearing it might have upon a case of this character?

Mr. Sillman: I answer that question just by asking this. Would a jury be permitted to speculate, and I say, it would be pure speculation on the basis of this evidence, if this is all we have.

The Court: But is that all you have?

Mr. Sillman: I am just taking it one by one. If this is all we had, would the jury be permitted to speculate on that kind of statement which it is arguable whether it is even correct or not, would the jury be permitted to speculate that the defendant had no funds at that time.

Now, I must in fairness add to that, not only that, but everything else in the case. So let's see what else is there in the case. Nothing else that deals with dollar amounts. There is little conflict about income tax returns or records, in spite of this gentleman who says he viewed the microfilm. Notwithstanding his statement, we are still going to take the certified copy that was furnished, regardless of whether the returns were or were not filed in certain years that are there referred to. The Court, of course, will take judicial notice that the exemptions and deductions were different in those years. And the possibilities at this stage [fol. 508] of the case are, from any conceivable source, income, non-taxable income, might have come into the possession of the defendant.

So, what is there in this record that would undermine or be sufficient to warrant the Court to permit a jury to speculate on it. Is there anything that has been clearly and accurately established? The computation itself doesn't mean a thing unless it is clearly and accurately established that the defendant had no cash. There is no question about that. This computation has none in it.

The Court: In other words, your theory is that it is fatal for the reason that there is no evidence showing he had no cash?

Mr. Sillman: That is correct, and furthermore, it is fatal because the burden of proof and the degree of proof as set out in this Circuit case—It says this. There is such a system of computing income known as net worth system. It is not referred to in a code section, it is not referred to in the regulation, but under a code section it may be so interpreted as to permit that kind of a computation. The Circuit Court says that evidence is only circumstantial evidence in any case, and at best it is weak evidence.

Now comes the Circuit Court and says what cases can you use that kind of weak circumstantial evidence in, and the test is, the case in which you can use it, even as weak as it is, is in a case where the Government clearly and accurately establishes by competent evidence the basic net worth at the beginning of the tax year.

Now, I say this to Your Honor, and I urge it most strongly, that if in a case in which the Government has [fol. 509] not clearly and accurately established the net basic figure at the beginning, if such a case is permitted to go to the jury, the jury must indulge in the grossest kind of speculation to arrive at a verdict. I think that the Circuit Court was extremely wise when it had before it the consideration of whether such weak circumstantial evidence should in any case go to a jury. And it being weak, circumstantial evidence and characterized as such, certainly it may be all right to go to a jury where the basic net worth at the beginning of the period is clearly and accurately established, but, my goodness, in a case where it is not clearly established, where it is not accurately established, to permit such a case to go to a jury throws the entire procedure into the realm of speculation and guess.

Mr. Platt: May I add one point, Your Honor?

The Court: Yes.

Mr. Platt: We have in our memorandum cited the two recent Sixth Circuit cases on this subject, both of which recognize the need for a clearly and accurately established basic starting point. The evidence in those two cases, both of which held that there was such a starting point, was infinitely stronger than anything in this record. In the Brodella case the defendant came in and furnished to the agent a signed financial statement during the investigation.

He said in writing, and over his sworn signature, "This is what I had at the beginning of the period." You can't beat that, of course, from a starting point. In the Gariepy case it was almost as strong. They were dealing with a doctor defendant who had come out of medical school just a very few years before the taxable period, who had borrowed heavily during the intervening years, and where there was [fol. 510] every reason to assume that he had nothing at the beginning of the taxable period.

Comparing those with the evidence in this case, I believe Your Honor will—we submit, in any case, and we hope Your Honor will conclude that the evidence in this case is infinitely weaker than either of those two, and in fact, is probably the weakest case of any in the books on starting point.

The Court: In the Brodella case the defendant was shown to be insolvent at the close of 1938 and the Government introduced his income tax for 1938 to 1943 showing the small amount of his income in those years. Quoting from your brief, "The court, with ample justification, sustained the conviction, finding that the jury was warranted in assuming that no accumulated funds existed. There was ample direct evidence of fraud and concealment." Upon what basis did the Court find that the jury was warranted in assuming that no accumulated funds existed?

Mr. Platt: Your Honor, are you talking about the Brodella case?

The Court: Was that the Brodella case or the doctor's case?

Mr. Platt: That's the Gariepy case.

The Court: Yes, the Court had the Gariepy case in mind.

Mr. Platt: The difference between that and our case is simply this, one of the differences would be that in that case you had a young defendant who had very recently come into an earning position and who had gotten out of medical school only two or three or four or five years before, and who at that time was shown to be insolvent. In this [fol. 511] case you have a man who has been in business since 1917.

The Court: Was not a deficiency judgment obtained against this defendant? What was his financial condition?

Mr. Sillman: Concerning the deficiency judgment—

The Court: Taking the overall picture, what was his financial condition as to solvency or insolvency?

Mr. Sillman: His financial condition was that he had considerable means, and I was going to answer about the deficiency judgment.

The Court: Is that reflected in the evidence in this case?

Mr. Sillman: Well, of course, Your Honor's point is well put. The question, I should say, is well put at this stage, that the defendant has not yet come forward with evidence of his financial condition. But, so far as foreclosures are concerned, there are a lot of people who just let properties go by the board and forget about them. That doesn't establish whether a man had anything or not. People just abandon a piece of property.

The Court: Of course, it goes back to your original proposition: that is, "To be dependable," as stated in the Gariepy case, "the method requires a starting point, reasonably well established as accurate." Your contention is that they may have had a starting point but you don't think they did, and if they did have a starting point it is inaccurate, primarily because they did not discover whether or not he had any cash.

Mr. Sillman: They haven't shown that he had no cash.

The Court: Might the jury, as indicated in the Gariepy case, be warranted in assuming that no accumulated funds existed in view of all the evidence in this case?

[fol. 512] Mr. Sillman: I wouldn't think so.

The Court: In other words, you are telling the Court that the burden rests upon the United States in this case to establish the fact that there were no accumulated funds existing, is that true?

Mr. Sillman: That is correct, and let me amplify that. I am not saying this to be a fact. Here is a defendant who received \$1030 by inheritance, but in measuring the case at this stage, we must make allowance for the fact that it would be just as consistent for somebody to have inherited half a million dollars as to have inherited \$1030. The test is not what the defendant shows, the test is whether the Government makes its case up to this point.

The Court: As I understand your position, it is that the

increase in net worth in subsequent years could come out of the prior existing assets not so included?

Mr. Sillman: Could come out of prior existing assets which the Government has not clearly and accurately shown did not exist.

The Court: Which have not been included by the Government. In other words, it is dependent upon the Government, in the first instance, to include all assets in a net worth?

Mr. Sillman: Clearly and accurately, as the Sixth Circuit said.

The Court: How is the Government to produce evidence of assets in the form of cash?

Mr. Sillman: This is how they might do it. An agent might take the stand and say that "I questioned the defendant [fol. 513] and I asked him whether he ever inherited any money, and he told me he never inherited any money." That would be some evidence he didn't inherit any money. But, since there is no such evidence the Court must assume, among the many possibilities, that this defendant might have inherited a lot of money. I am telling Your Honor he did not, in order to be fair, but it must be assumed that the Government has not eliminated that possibility. That is the point that I am making.

The Court: Might not the jury assume, in view of all the evidence in this case, that there wasn't any money, that there weren't any accumulated funds existing?

Mr. Sillman: It would be a matter of the purest kind of speculation. I think that's the very reason why the Circuit Court permitted the net worth computation to be used where the basic net worth beginning was clearly and accurately established. The purpose of that is not to permit the jury to purely speculate as to whether there was or was not. That is a matter of guess, isn't it, at this point?

The Court: Are you conceding that the taxpayer's assets or property, as shown by the net worth testimony of the Government, eliminating the question of accumulated funds, such as cash, is accurate as having a beginning point at the commencement of the year?

Mr. Sillman: If you say eliminating—

The Court: I am asking for the purpose of argument.

Mr. Sillman: If you say eliminating cash, why of course it would be accurate, but the every fact that it is inaccurate is because it eliminates the cash.

[fol. 514] The Court: In other words, that destroys it?

Mr. Sillman: That destroys it.

The Court: You are relying solely on the one phase, is that true? Let me get your position clearly.

Mr. Sillman: Yes, that is right.

The Court: The Fenwick and Bryan cases held that "when the Government relies upon circumstances of increased net worth and expenditures in excess of reported income to establish income tax evasion, the basic net worth at the beginning of the tax year must be clearly and accurately established by competent evidence. This is true because if the reported net worth of the taxpayer at the beginning of the taxable year does not include all of the taxpayer's assets or property, the increase in net worth in subsequent years could come out of the prior existing assets not so included. Convictions were reversed in both the Fenwick and Bryan cases, because in the opinion of the Court the Government's evidence did not accurately establish the basic net worth of the taxpayer at the start of the taxable year in question. We agree with the general principle of law as stated by those cases."

Now, you are relying solely upon one ground, and that is, the failure of the Government to establish that this defendant had no assets in the form of cash, accumulated cash. That is fatal to their case.

Is that your only objection to the record as is?

Mr. Sillman: You mean the basis for our motion?

Mr. Platt: Your Honor, we have stated another ground for the motion. We have been addressing ourselves now to [fol. 515] this question of the net worth starting point. The first ground for our motion, the right of the Government to use the net worth analysis at all in the absence of undermining the books—we have stated the reasons in our memorandum.

The Court: In other words, it is fatal to the entire net worth, as shown by the Government, in each of the respective tax years, by failure to show that he didn't have any cash.

Mr. Platt: That destroys it.

The Court: Basically, is that your primary objection? You are relying solely upon that ground for a dismissal?

Mr. Sillman: Mr. Platt has pointed out there are two grounds. This is the major one. You have summarized that. I won't repeat that. That is the major point.

The Court: What is the minor point?

Mr. Sillman: There is another point and by comparison I would say it was minor to this. The other point, which is brief and which we haven't argued, is that unless the Government's evidence establishes a situation in which the taxpayer's income cannot be computed from his books and records, they have no right to resort, in the first instance, to net worth, and that is irrespective of this second point, whether they accurately establish basic period or not. In other words, in the cases in which net worth has been used—as for example, they bring in a witness. He made a large purchase, paid the man; it is no place, not in income. Now, we don't have in this case any specific instances of omitted income, nothing like that. And where there are books and records, if they are susceptible of permitting a computation of the taxpayer's income, then the Government must rely [fol. 516] upon those books and records and bring in specific instances.

That's the point we are making on that. That is the minor point. But Your Honor has summarized entirely correctly our position on the second point.

The Court: Let us see what the Government says about it.

Col. Windom: The position is very simple. The defendant stands before this Court as an honest man, at least for all years not charged in the indictment. He had three foreclosures, as Your Honor has pointed out. One was his home, a rather sacred thing in the American tradition. In the next one of those foreclosures he stood before the Common Pleas Court and had the temerity to say he couldn't raise eighty dollars in six months time. If he wasn't broke then I have never been broke.

Now, we take him at that point. We assume he is honest back in those days. The grand jury had made no charges. He comes along, and for the years from 1925 to 1941 he had

no taxable income, as shown by his returns or failure to file returns. We have to assume he had none because he is honest by presumption of law back in those days. He dropped his safety deposit box from '35 to '41. The corporation of which he is one of the officers and one of the three interested persons goes into a receivership. The total assets he bought out for \$650.

I just completely omit any reference to that financial statement.

The Court: In other words, your contention is that the jury might be warranted in assuming that no accumulated funds existed?

Col. Windom: I don't see how they can arrive at any [fol. 517] other conclusion.

The Court: Of course, the jury sometimes arrives at different conclusions than what we predict. I am merely asking a question as to whether or not—

Col. Windom: We come up to 1942, to complete that phase. He paid \$27.50 tax. A minor income. In 1943, \$125.33. In other words, there is a man that in substantially eight to ten years has paid \$150 in tax. That would indicate certainly, on all the legal presumptions that we can indulge in, that he has no cash.

The Court: What do you say in reply to Mr. Sillman and Mr. Platt's statement that it is incumbent upon the Government to establish that there is an absence of other assets such as cash from which this net worth could be accounted for. Does that burden bear upon you to specifically show those facts?

Col. Windom: We have to fix a substantially definite starting point and have to show that as of that date—that is, we can substantially fix his financial condition, whether it be cash or anything else. It is stipulated by counsel here that the only question as to this point is cash, that the balance of our figures, assuming our cash is correct, is correct. Therefore, for all these years he has lost three pieces of property, he couldn't raise eighty dollars to save one of them.

The Court: In other words, you say that is sufficient evidence to establish the fact that he didn't have accumulated

assets from which he could have made these purchases in later years?

Col. Windom: It certainly is. The fact that he filed no [fol. 518] income tax returns. We must assume for those years that he is honest. Being honest he had no assets. He had income of less than—an inconsequential amount under which he had to file no return.

Now, on the purchase of bonds, he buys bonds in \$18.75 dribbles in 1944. He bought \$150 worth of bonds in the entire year. He started up in 1945. It goes up more and then she really sky rockets.

Now, on the net worth basis for determining correctness, this matter of books. Complete books were not submitted by the defendant for the years in question. There were no cash disbursement journal, no sales journal and no purchase journal. The books are incomplete. The cash books submitted by the taxpayer contain false entries, irrespective of what you call misnomer. Repeated entries Loans—D. Friedberg or D. Friedberg are false by any method. You can't make a mistake that often. It has to be an intentional entry. And by counsel's stipulation, shall we say, an intentional entry is a false entry. Checks received from F. & R. Lazarus for alterations were entered as Loan—D. Friedberg. The total of the bank deposits didn't agree with his cash receipts. Mathematical errors? Well, rather large ones.

The Court: May I ask counsel for the defendant one question? Is it your contention that the Gariepy case makes it incumbent upon the Government to exclude all accumulated assets such as cash, for example? Was not the ruling of the Court in the Gariepy case to the effect that the Government having shown that the defendant was insolvent at the close of 1938, by introducing the income tax returns from 1938 to 1943, showing the small amount of his income in those years, in view of these circumstances [fol. 519] there was ample justification to sustain the conviction and find that the jury was warranted in assuming that no accumulated funds existed?

Mr. Sillman: I think the difference, to answer your question, is simply this. As Mr. Platt pointed out, the Gariepy case involved a young doctor who was just fresh

out of school and who never made any claims in any statements to the agents that he ever had anything, and he was flat broke and he literally was conceded to be flat broke, not by circumstantial evidence but he was actually flat broke at the beginning point that the Government started.

The Court: Is not that true in this case; insofar as the evidence is concerned this defendant was flat broke?

Mr. Sillman: The difference in this case is this.

The Court: That is, he was near that point, in view of what Col. Windom has cited to the Court.

Mr. Sillman: Here is the difference.

The Court: My question was directed to the one point, Mr. Sillman. Might not the jury properly assume, from all the evidence in this case, that the defendant had no accumulated funds, such as cash, for example?

Mr. Sillman: I would say definitely and unequivocally no, and I would like to make the comparison between the Garipey case and give my reasons for it.

The Court: You may do so.

Mr. Sillman: Now, let's take for comparison just one simple example. Col. Windom has read from an exhibit an [fol. 520] entry prepared by an attorney who represented Mr. Friedberg back in '38 or '39, and he infers from that entry that Mr. Friedberg—that's the judgment of the Court on which the Court was willing to postpone entry of judgment in the foreclosure case, postpone sale—he concludes from that, that that indicates that Mr. Friedberg didn't have anything. Now, it is just as equally consistent to—

The Court: Are you going quite that far?

Might not the jury properly assume from evidence of that character that he did not have anything?

Mr. Sillman: No, there wouldn't be a clear showing of that. It wouldn't have been clearly and accurately shown.

The Court: Might not the jury be warranted in assuming, from those circumstances, that there were no accumulated assets such as cash?

Mr. Sillman: I don't think the jury would be permitted to speculate from such a situation.

The Court: Would they be speculating in view of the evidence in this case?

Mr. Sillman: I think they would be.

The Court: That is, taking the entire record as is.

Mr. Sillman: I would think so.

The Court: Or, would they be justified in assuming from all the record in the case that there was an absence of assets?

Mr. Sillman: If the Government had clearly and accurately established the absence of cash in this case, then they would be warranted.

[fol. 521] The Court: I am just wondering whether the Gariepy case is authority for the statement you have just made.

Mr. Sillman: The point that I make there——

The Court: In other words, does the Court go that far, to say in effect that it is incumbent upon the United States to show a complete absence, or if having shown circumstances and evidence upon which the jury might properly assume that there was an absence of that, it is sufficient.

Mr. Sillman: I suppose one of the major differences is that in the Gariepy case it is conceded he was flat broke and the intervening years were introduced.

The Court: I assume he didn't concede anything because——

Mr. Platt: Your Honor, may I add one thing. I think the analysis of the Court is completely accurate on this. It is a question of degree and the weight of the evidence which will be required to be introduced by the prosecution in order to warrant putting that case to the jury.

The Court: I think I understand your position, Mr. Platt. In other words, your contention and that of Mr. Sillman is this, in brief. That it is incumbent upon the United States, in the first instance, to exclude all possibility of assets such as cash. Is not that true?

Mr. Sillman: That is correct.

The Court: Now, are you contending that these two cases hold to that effect?

Mr. Platt: They do, Your Honor.

The Court: The Gariepy case——

Mr. Platt: The Gariepy case recognizes——

[fol. 522] The Court: What part of the statement of the

Court indicates that the jury was warranted in assuming that no accumulated funds existed?

Mr. Platt: I think if Your Honor will read that case——

The Court: The Court will examine the case further.

Mr. Platt: ——you will see that the difference in degree of weight of evidence on that point, in respect to the Garipey case and this case, is very great. I think you will find that the Court—that the starting point had been established so much more solidly than anything we have here.

The Court: I think I understand your position, Mr. Platt. The Court will examine these cases further.

The Court: Let the record show that the Court reserves a ruling on the motion.

[fol. 523] Whereupon, the defendant to maintain the issues on his part to be maintained, introduced and offered in evidence the following testimony, to-wit:

ELAINE FARRAND FRIEDBERG, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Sillman:

Q. Elaine, will you speak out loud so that I can hear you clear over here and so that all of the members of the jury can hear you?

A. Yes, I will.

Q. State your name, please?

A. Elaine Farrand Friedberg.

Q. What is your relationship to David Friedberg?

A. He is my father.

Q. And, you are his daughter?

A. That's right.

Q. Where do you live, Elaine?

A. 1350 Neil Avenue.

Q. You have lived at home always?

A. No, I haven't.

Q. You have been away at some time?

A. I have been away for the past five years.

[fol. 524] Q. Where are you employed, Elaine?

A. At the Ohio Tuberculosis Hospital.

Q. And in what capacity?

A. I am the pharmacist in charge; pharmacy department.

The Court: Miss Friedberg, could you please speak louder so all the members of the jury can hear you.

A. The pharmacist in charge of the Pharmacy Department at the Ohio Tuberculosis Hospital.

Q. Do you have a savings account in the First Federal Savings and Loan?

A. Yes, I do.

Q. Do you happen to recollect the present balance in that account?

A. No, I don't.

Q. That account, I believe, is also carried in your mother's name, Frances Friedberg?

A. Yes, that's right.

Q. Will you tell us, Elaine, whose money that is, yours or somebody else's?

Col. Windom: I object.

The Court: Yes. What do you claim for this?

Mr. Sillman: We have at all times claimed that this account, which is included—

The Court: You haven't fixed any time. Are you talking about the present or some other year? The objection is sustained.

Mr. Sillman: Your Honor, I am wrong. I get it.

[fol. 525] Q. During the year 1947 was that your account?

A. It was, yes.

Q. And during 1946 was it your account?

A. It was.

Q. And during 1945?

A. Yes.

Q. And during '44 was it your account?

A. That's right, it was.

Q. Now, do you have an account in the Dollar Federal Savings and Loan Company now?

A. I rightly can't answer that. My mother has taken care of my deposits. I have given her all of my deposits to make.

Q. I can't hear you.

A. I have given my mother all of my deposits because it's been difficult for me to get downtown, and I can't answer that now.

Q. In other words, the savings account to which you have referred and any savings account that you have, the money was given by you to your mother?

A. That's exactly—

Col. Windom: Object and move to strike the answer.

The Court: Motion sustained. The question is leading and suggestive.

Mr. Sillman: I thought I understood the witness to so testify but I will ask again.

Q. Who made the deposits in your savings account, the [fol. 526] one you testified to or any others?

A. The ones previous, during those years, I made or else I gave my money to my mother to *make* for me at the times I could not get downtown to the bank, and it has been the same since then.

Q. Do you have any sisters?

A. No, I don't.

Q. Do you have a brother?

A. I have a brother.

Q. Is it one brother?

A. One brother.

Q. And his name is?

A. Armand Wayne.

Q. And, is he living at home?

A. No, he is married. He is in the Navy in Virginia.

Q. Is he in the service?

A. That's right.

Q. He is not available in Columbus?

A. No, he is not. He is in Virginia.

Mr. Sillman: You may cross examine.

Cross-examination.

By Col. Windom:

Q. How old are you?

A. I am 26.

Q. When did you open this account in the First Federal?
[fol. 527] A. I can't remember that. I know I have had an account ever since I have worked, which has been many years.

Q. How many years?

A. I don't know. It's been while I was in high school yet, going back quite a number of years, during vacations.

Q. Is it your contention that all of the money in that account belonged to you?

A. Why, of course.

Q.—Where did it come from?

A. I earned it from working; salaries.

Q. How much is in the account?

A. Right now I don't know the balance.

Q. How much was in the account at any time, to your recollection?

A. That's been up in the thousands. I don't exactly recollect any definite figure now because I haven't looked at the book lately.

Q. When did you start to work?

A. Well, it was while I was still in high school.

Q. Can you fix the year, please?

A. It was about—let's see. I graduated in 1942. I graduated in 1942, and it was before that.

Q. Can you give us the year when you started to work?

A. I don't remember. I have held small odd jobs.

Q. Approximately?

A. I would say probably 1939, 1940.

Q. How much were you making?

[fol. 528] A. I don't recollect that either.

Q. Approximately how much were you making?

A. I couldn't recall now.

Q. Well, Miss Friedberg, was it one dollar or one hundred?

A. Well, I would say it was in between that, according to the services.

Q. What is your recollection?

A. Well, I have had jobs anywhere from \$30 to \$100, including.

Q. Where did you work?

A. I have worked at Lazarus, Wendt-Bristol, Ohio State University Hospital.

Q. Let's just start out, where did you work first?

A. Lazarus.

Q. How long did you work at Lazarus?

A. Summer vacations.

Q. How many years did you work there summer vacations?

A. As I recall, I worked there the last year of school, high school.

Q. When did you cease to work there?

A. Oh, it was sometime during my freshman year of college. I worked there after college—after I started college, also.

Q. Where did you work next?

A. Wendt-Bristol.

Q. How long did you work at Wendt-Bristol?

A. Two years.

Q. Where did you work after that?

[fol. 529] A. Two years, Ohio State University Hospital.

Q. Can't you remember on some of those jobs what you received in salary?

A. I have held quite a number of jobs. It would be a difficult thing for me to go back and remember that many years ago.

Q. When do you say you first started to work?

A. Well, I have held small jobs, just doing odd things during high school. The first in Lazarus; I recall that definitely.

Q. What year was that, please?

A. 1942.

Q. What do you say you were making at that time in 1942?

A. I didn't say. I just haven't the faintest idea what my salary was at Lazarus at that time.

Q. What did you do with your earnings in 1942?

A. I put them in the bank.

Q. What bank?

A. I believe it was the Federal Savings. As I say, I don't recall what the banks were, either.

Q. In view of the fact that the record shows that that

account wasn't opened until 1944, what is your best recollection about where you put them?

A. I don't remember.

Q. That's 1942. You were working at Lazarus and you don't remember what your salary was?

A. No.

Q. Do you have any definite recollection as to what you [fol. 530] did with your money?

A. I know I saved it.

Q. Do you know where you saved it?

A. Well, to my best recollection it was in the bank.

Q. Then, if that account wasn't opened until 1944, your recollection is wrong, is that right?

A. I am afraid my memory fails me there. That was a good many years ago and I just never made any point of remembering.

Q. Can you give me your best recollection of what your average weekly or monthly income was in 1942?

A. I am sorry, I don't recall.

Q. Now, if you started at Lazarus in 1942, how long did you work there?

A. Well, I know I worked there up until a good part of my freshman year of college was over.

Q. When would that be?

A. That was in June of '43. I didn't work that entire year. Part time, possibly.

Q. Do you have any recollection of what you made in the year '43?

A. No. I started at Wendt-Bristol's then.

Q. Started at Wendt-Bristol's in 1943?

A. Yes. Summer vacation—I am sorry, I went to school that summer quarter. It was the following quarter.

Q. You started at Wendt-Bristol's late in '43?

A. Yes.

[fol. 531] Q. How long did you work in Wendt-Bristol's?

A. Several months. I don't know.

Q. Half a year, two years? What's your best recollection?

A. Well, it was during vacations, summer vacations.

Q. During summer vacations?

A. At least three months.

Q. Did you work while the school quarters were running?

A. Not after that, no.

Q. What did you make at Wendt-Bristol's during that summer vacation?

A. I can't recall exactly. I hate to make any statements. It may have been thirty, forty dollars.

Q. What's your best recollection as to your weekly rate?

A. I can't give you any.

Q. When did you next have a job?

A. Well, I worked the following summer in Wendt-Bristol's, and then my next job was at Ohio State University Hospital.

Q. That would be the summer of 1944?

A. Right.

Q. What did you make that summer?

A. I know it was increased over the previous. I believe it was somewhere around forty. I can't say for sure.

Q. Where did you work next?

A. Ohio State University Hospital.

Q. Starting when?

[fol. 532] A. That was starting March of '46.

Q. What did you make there?

A. It was about \$50 a week.

Q. Doing what?

A. I was an apprentice pharmacist.

Q. What amount of money did you deposit in this account you speak of?

A. Well, I was fortunate in being able to deposit just about my entire check because I lived at home. I had very few expenses, in fact, just about none. Therefore, I was always able to deposit my entire checks.

Q. How often did you deposit checks?

A. Well, when the checks were issued. Either I or my mother deposited them for me. Naturally, whenever the checks were issued.

Q. How often did you give your money to your mother to deposit for you?

A. Whenever the checks were issued.

Q. When were they issued?

A. Payday.

Q. How often was that?

A. At the University I believe it was once a month.

Q. How often was it at Wendt-Bristol's?

A. I don't remember. It may have been every week, it may have been twice a week. I don't recall what their pay schedule is.

Q. How often was it at Lazarus?

A. Lazarus, I think, was every week.

[fol. 533] Q. You are quite sure of that, aren't you?

A. No, I am not quite sure. I said, I think.

Q. You don't have any recollection that the F. & R. Lazarus pays every week?

A. I am sorry, I don't.

Q. Then, you have said that you worked during the summer of 1943, that you worked during the summer of 1944, both of those being at Wendt-Bristol's?

A. I meant to make a correction. It was the summer of '43 that I went to school. The following two summers were at Wendt-Bristol's.

Q. That would be '44 and '45 at Wendt-Bristol's?

A. That's right.

Q. Did you make any deposits other than when you were working?

A. No.

Q. Let's take 1944. What period of 1944 did you work?

A. It was in the summer of '44.

Q. What do you mean by that?

A. It was from about the end of May through August.

Q. From May to August. Did you work at any other time in 1944?

A. I may have done part time work every so often. I can't recall that.

Q. Well, how often would you have done that?

A. I don't know, whenever something may have come up.

Q. Would the part time income have been more or less than the regular income?

[fol. 534] A. Probably less.

Q. What is your best recollection?

A. I am sorry, I have none. I just never made any point of recalling those things. I was going to school at the time and my mind was strictly taken up with that.

Q. Where did you work in December 1944?

A. I don't remember.

Q. Where did you work in November 1944?

A. I don't remember that, either.

Q. Where did you work in March 1944?

A. I don't remember.

Q. The bank account shows deposits in those months. Was it your money or someone else's?

A. Well, if it shows deposits it must have been mine. Nobody gave me anything.

Q. Where did it come from?

A. As I say, I must have saved it. It is possible I saved it during the period I was working and didn't make the deposits at the time and they were made at those times. I just don't have an accurate enough recollection.

Q. Where were you working in January 1945?

A. I don't remember.

Q. Where were you working in February 1945?

A. I don't remember.

Q. Where were you working in March 1945?

A. I don't remember.

[fol. 535] Q. Where were these deposits coming from, Miss Friedberg?

A. As I say, if they were there, it was my money.

Q. Now, you have testified that you gave your mother money or checks to deposit each payday, and yet this bank account reflects deposits when you were not working. Do you have any idea where that money came from?

A. As I said before, it is possible that I may have saved it at the time and used it at those times to be deposited.

Q. Do you want the jury to believe that, for example, you worked in the summer, but you saved out money so that you could make a deposit each month during the winter?

A. It is possible. I don't remember what I did.

Q. What department did you work in at Lazarus?

A. The dress department.

Q. Who was your foreman or forelady?

A. Mrs. Cole.

Q. How do you spell it?

A. C-o-l-e.

Q. Is she still there, as far as you know?

A. No, she is not.

Q. What became of her?

A. She is now with Cole of Columbus.

Q. Did you save any money or keep any money out of your earnings?

A. I am sure I did.

Q. How's that?

[fol. 536] A. I am sure I did.

Q. What did you do with it?

Mr. Sillman: If the Court please, the witness has been over this many times. It is repetition.

Col. Windom: The question has not been asked before.

Q. What did you do with the money you held out, Miss Friedberg?

A. I saved my money, as I mentioned before. I had no expenses living at home, having all my schools supplied to me, and my schooling. Therefore, all the money I earned was mine to do with as I pleased, and I was able to save it all.

Q. Who paid your way through school?

A. My parents.

Q. What were you doing in August 1945?

A. I was working.

Q. Were you living at home at that time?

A. Yes.

Q. Were your parents still paying all of your expenses?

A. They still do.

Q. Did you make any unusual expenditures?

A. Did I make any unusual expenditures?

Q. That's right?

A. No, I had none.

Q. Did you buy anything of any great cost at that time?

A. I had nothing to buy.

Q. What did you do with the \$138 you withdrew in that month?

[fol. 537] A. I am sure I don't remember.

Mr. Sillman: What year is that?

Col. Windom: August of 1945.

Q. You have no idea what you did with that money?

A. I don't know what I did with it. I am sure I don't. Probably go to New York.

Q. Who made the withdrawals, you or your mother?

A. Depends on whoever happened to be downtown at the time.

Q. How many withdrawals did you make?

A. I am sure I couldn't recall that.

Q. Was it one or ten?

A. I haven't the faintest idea. In fact, I didn't even recall that one.

Q. Do you know of any withdrawals being made?

A. No, I don't. I don't recall any, no. If I wanted to withdraw any, I just do it.

Q. How often did you withdraw?

A. I haven't the faintest idea.

Q. Where were you working in January 1946?

A. I may have started at the hospital. I don't remember that, either, exactly.

Q. When did you start at the hospital?

A. Well, I may have done part time work during that time.

Q. You told me March.

A. Yes. That is full time.

Q. When you started working at the hospital in March [fol. 538] 1946 did you continue making deposits in this account?

A. Well, yes.

Q. Regularly?

A. I imagine so. I have always, since I have been away from home, sent the money home to my mother to deposit, either in lump sums at a time. Or, before I left home, I recall the money being put in the bank. That's about all I can say to that.

Q. Well, in April 1946 you say you were working at the University Hospital?

A. Yes.

Q. Were you depositing your money in that month also?

A. Yes.

Q. The same is true in other months in that year?

A. Every month since then.

Q. Well, Miss Friedberg, if the bank account shows a \$50 deposit on January 30, \$68 on May 27, \$72.20, June 20, \$50 in July, what did you do with the other money that you were depositing up until that time?

A. What other money?

Q. Well, I believe you said you were making \$50 per week starting March 1946. It doesn't add up to \$50 a week there. What did you do with the rest of your income?

A. Oh, I don't know. If I felt like depositing it all, I did; if I didn't, I just used of it what I wished.

Q. Who was buying your clothes at that time?

A. My parents.

[fol. 539] Q. Were you living at home?

A. Yes.

Q. When did you graduate from the University?

A. In March of '46.

Q. And, you went right to work?

A. Yes.

Q. How much had you accumulated in your savings account up until that time?

A. I don't know.

Q. How much do you have right today?

A. I couldn't even tell you that. My mother has my bank book.

Q. Did you say you do or don't have it?

A. I don't have it.

Q. Now, between July 1946 and November 1946, were you continuing to save your money?

A. Yes.

Q. What were you doing with it?

A. I had it in a bank in Philadelphia. I was in Philadelphia. I left Ohio and went to Philadelphia.

Q. How much did you acquire in the bank in Philadelphia?

A. I don't know how much I acquired, but I was making over \$200 a month clear.

Q. Do you still have that bank account?

A. Not in Philadelphia, no. When I left Philadelphia that was all sent here to Columbus.

[fol. 540] Q. Transferred to Columbus. And, what bank, please?

A. I don't know, whichever bank my mother happened to have my deposit in. I imagine it was the same bank.

Q. Exactly what period did you work in Philadelphia?

A. From October to May of '47.

Q. Where did you work there?

A. Jefferson Hospital.

Q. How much did you make there?

A. \$200 a month.

Q. How much of that did you save?

A. Well, I was able to save all of it. I had complete maintenance in the hospital.

Q. What is your best recollection of how much you saved?

A. I haven't any recollection of it.

Q. What did you do after you came back from Philadelphia?

A. I went to Cleveland.

Q. Where were you working in 1947?

A. Marshall Drug Company, Cleveland, Ohio.

Q. Where, please?

A. Marshall Drug Company in Cleveland, Ohio.

Q. Did you have a bank account in Cleveland?

A. Yes, I did.

Q. Do you still have it?

A. No, I don't.

Q. When did you close that out?

[fol. 541] A. When I left Cleveland.

Q. Who closed it, you or your mother?

A. I did.

Q. How much did you transfer?

A. I don't remember. There was quite a good sum.

Q. In what bank did you put it?

A. I don't recall the name of it. I think it was the Cleveland Trust.

Q. The bank in Columbus.

A. It was sent here to Columbus. I sent it to my mother to deposit for me.

Q. Well, you say it was a considerable sum. Approximately what sum?

A. Oh, probably around \$2000 or so, or more.

Q. Did she put it in the bank for you?

A. As closely as I know, she did. I would imagine she did.

Q. Miss Friedberg, you are 26 years of age. Did you ever ask her?

A. Did I what?

Q. Did you ever ask her if she deposited it for you?

A. I have always trusted her.

Q. When did you first know that you were going to be called as a witness in this case?

A. Just yesterday. In fact, I wasn't even sure I was going to be. I have had no formal call, as far as I know.

Q. And, you know what you were going to be asked, didn't you?

A. No, I did not.

[fol. 542] Q. You have never talked to Mr. Sillman before you came in here?

A. Nothing but to say how do you do.

Q. Do you mean to tell this Court and jury that Mr. Sillman did not know what your testimony was going to be?

Mr. Sillman: Just a moment. Mr. Sillman knew what her testimony was going to be about. He is asking this witness what I knew. I knew what I was going to ask her.

A. Yesterday was the first I met Mr. Sillman.

Mr. Sillman: Just a moment. I am objecting to that question.

The Court: Yes. Sustained.

Q. Mr. Sillman says he knew what your testimony was going to be. How did he know?

Mr. Sillman: I knew what I was going to ask her.

A. Yesterday was the first that I have ever met Mr. Sillman, and I came here with my mother because of her accident.

Q. You mean to say, then, that you didn't know until these questions were propounded to you today what you were going to be asked?

A. I did not.

Q. You didn't even know the general subject of it?

A. Well, I know the subject of the case.

Q. The subject of the questions to you, Miss Friedberg, you didn't know those?

A. No.

[fol. 543] Redirect examination.

By Mr. Sillman:

Q. In order that we may have some understanding of what this cross examination has been about, I call your attention, Elaine, to the fact that the net worth computation, a paper introduced by the Government, says that the balance in the First Federal Savings Account on December 31, 1944 was \$276.77. You have testified that you do not recall how or when that money got into the account or in what amounts?

A. I don't recall.

Q. And you still have no recollection on that?

A. No, I don't.

Q. This same document, concerning which the cross examination has been shows that that account was increased during the year of 1945 and at the end of 1945 was \$302.25, which is just about \$26.00 more in the year. Now, you tell this jury whether you can or can't remember just what date, and perhaps what hour, or what day at least, of the month and the year that each one of those \$25.00 went in the account. Can you tell them that?

A. I wasn't even sure it was increased \$25.00.

Q. Now, you said that in the year '46, after you graduated, you then took on this fulltime employment?

A. That's right.

Q. How much were you making at this fulltime employment?

A. At least \$50 a week.

Q. I call your attention to the net worth statement balance which says that that account at the end of December [fol. 544] 31, 1946 was \$804.50, which is a total increase for the entire year of '46 of \$502. Can you tell this jury when and every day that you either gave your mother money or you went to the bank to deposit that money, or she went to the bank? Can you tell them that in detail?

A. No, I can't.

Mr. Sillman: That is all.

Recross examination.

By Col. Windom:

Q. You say your father was supporting you?

A. Yes.

Q. How much did you say you made in the year 1946?

A. I don't know. I would have to take a pencil and paper and figure it out.

Q. Well, now, you started to work in March of that year. When in March?

A. The beginning of March, I believe.

Q. And you say you made at least \$50 a week?

A. Yes.

Q. For the remainder of that year?

A. Yes. Not for the remainder of the year. I made more than that for the remainder of the year because that's when I left Columbus and went to Philadelphia in October of '46.

Q. Well, what did you make in Philadelphia?

A. \$200 a month.

[fol. 545] Q. How many months did you make the \$200?

A. All the months I was there.

Q. Just in '46?

A. Well, October, November and December.

Q. That would be, then, \$400 there.

A. It is more than \$400.

Q. How much, if that was more than \$400, would you say you made for that entire year?

A. I don't recall what my pay checks were from April up until October.

Q. Did you file an income tax return?

A. Of course. The companies all filed them for me.

Q. Did you file an income tax return?

A. Oh, yes, it was deducted and then I filed the tax return at the end—in March.

Q. You filed a return for '46?

A. Yes, of course.

Q. Did you tell your father that?

A. Tell him?

Q. Did he know that?

A. I don't know. I was in Philadelphia.

Q. Did he or didn't he know that?

A. I don't know. I was in Philadelphia.

Q. During all this time when you were in Columbus, in 1946, was your mother handling your money?

[fol. 546] A. When I gave her the deposits or checks to make.

Q. You have testified before that you gave her all of them. Now, did you or didn't you?

A. As I testified, also, before, there were times when I got downtown myself and it was handy for me to take care of them.

Q. Were you aware that your father claimed you as an exemption in 1946?

Mr. Sillman: I object, if the Court please.

The Court: Overruled.

A. I was away and I had no business whatsoever with my father at that time.

Q. Is your answer that you were or were not aware of it?

A. I wasn't.

Q. Does your father know how much money you were saving?

A. I don't know whether he ever looked into the bank account or not.

Q. Did you ever tell him?

A. I had no reason to.

Q. Your relations with your father have been good in these years?

A. Fine.

Q. But, you have no recollection of ever having discussed the matter with him?

A. No, I don't.

Q. Miss Friedberg, I want to repeat a question that I asked you before. Did you or did you not file an income tax return for the year 1946?

A. I am quite sure I did.

[fol. 547] Q. Where?

A. In Philadelphia.

Q. You filed that in Philadelphia?

A. Yes.

Q. You are sure about that?

A. As closely as I can recall, I am sure, yes.

Q. If it wasn't filed in Philadelphia where would it have been filed?

A. I don't know.

Q. Would you say that it would be either Philadelphia or Columbus?

A. Well, I don't know what reason I would have to file it in Columbus since I was in Philadelphia.

Q. Is your answer that it was filed in Philadelphia? I merely want you to give me a positive answer.

A. I would say yes.

Mr. Sillman: She can't—

Col. Windom: It was filed some place.

A. As closely as I recall, it must have been Philadelphia. I don't recall the exact incidents of writing it out and mailing it. Since all companies supplied us with the blank and I automatically filled them out and filed them, I imagine I would have followed the same procedure in Philadelphia.

Q. Is there any place else you might have filed it?

A. I can't imagine where.

Q. When did you come back from Philadelphia to Columbus?

A. I came back here in May of '46—or, '47.

[fol. 548] Q. May of '47?

A. I came back in April of '47. I went to Cleveland, then, in May of '47.

Q. You were in Philadelphia, if I understand, November, December, January, February, March of '46 and '47?

A. Right.

Q. Now, did you file that income tax return in 1946, please?

A. As I gave you testimony before, as closely as I remember, I must have followed the same procedure I have always, every place I work, where we were automatically supplied the blanks and I automatically filed them.

Q. What is the first year you ever filed an income tax return?

A. I don't know. I don't remember.

Q. Did you file one before 1946?

A. I don't remember.

Q. Did you file one for 1947?

A. Yes.

Q. Where did you file that?

A. Cleveland.

Q. Did you file one for 1948?

A. Yes.

Q. Did you file one for the tax year 1945?

A. I don't remember back that far.

Q. Did you file one for the tax year 1944?

A. I don't remember back that far either.

[fol. 549] Col. Windom: That is all.

Redirect examination.

By Mr. Sillman:

Q. You talked about filing something that was furnished you by the employer.

A. Yes.

Q. Do you know the difference between an income tax return and the withholding information, withholding tax information that employers are required to have the employees sign? Do you know that technical difference?

A. That's when you first go to work, you mean, starting in a position, is that what you are referring to?

Q. I am just asking you if you know the difference between what an income tax return is and what the employer gives you to sign up?

A. Yes, I think I do.

Q. Well, the paper that you got, that you are talking about filing, is that something that you got from your employers from time to time?

A. Oh, I see. Well, they supplied us with this small form, which is a statement of earnings.

Q. About what is the size of that small form? Maybe you can tell us the size of it.

It is about this size. (Indicating.)

Q. About the size of a check, you are indicating?

A. Yes.

Q. It isn't a long paper, eight and a half by eleven?

[fol. 550] A. No. That's the withholding form, or—that's the income tax return, isn't it?

Q. Now, when you spoke about filing income tax returns

at any time, were you speaking of an income tax return, or were you speaking about these papers that you said your employers—

Col. Windom: Object.

The Court: Sustained.

Mr. Sillman: I don't know which it was, myself.

The Court: Let her tell what she was speaking about.

Q. You tell us, now that we have asked the difference, tell us what was it you filed or where you filed it, if you know?

A. Well, in March—I know that the places where I worked have always supplied us with the statements for the income tax return. Now, I happen to be foggy just at the minute whether this return blank is something I procured myself or whether it is something that they give us. I don't know where, technically, it comes from but, nevertheless, I have filled them out and I have filed them.

Mr. Sillman: That is all.

FRANCES FRIEDBERG being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

[fol. 551]

By Mr. Sillman:

Q. Mrs. Friedberg, when I ask you questions or anyone else asks questions, will you please try at all times to keep your voice up so we can hear you, loud enough so everybody on the jury can hear you, too. Will you do that?

A. I will try.

Q. State your name for the record.

A. Frances Friedberg.

Q. Where do you live?

A. 1350 Neil Avenue.

Q. What is your relationship to Dave here?

A. His wife.

Q. And Elaine, there, is your daughter?

A. My daughter.

Q. Do you have any other children?

A. Yes, I have a son in the service.

Q. What is his name?

A. Wayne.

[fol. 552] Q. What year were you and Mr. Friedberg married?

A. 1915.

Q. And, where were you married?

A. New York City.

Q. How old is Wayne?

A. He is 23.

Q. Where did you live at the time you were married, Mrs. Friedberg?

A. On the east side of New York City.

Q. Were you working at the time?

A. Yes, sir.

Q. Where were you working?

[fol. 553] A. I was employed by the Marietta Carter Company at the time, in New York City.

Q. In what capacity?

A. Well, I sold there and I helped in most any capacity that I was able to.

Q. Do you have any recollection of about how much you made there?

A. In that particular position I made \$25.00 a week.

Q. How long after you were married did you remain in New York?

A. As nearly as I can recall, in the neighborhood of about a year or two. I am not real sure. Between a year or two.

[fol. 554] Q. Where did you move from New York?

A. To Dayton, Ohio.

Q. That's both of you?

A. Yes.

Q. Were you employed while you were in Dayton, Ohio?

A. Yes, sir.

Q. By whom were you employed?

A. I had held several positions there with different concerns. One was the National Cash Register Company, and then I was with the Recording and Computing.

Q. Recording and Computing?

A. Yes. They were an ordnance plant. Through the war they did war work, and then I was with several private concerns; commercial you know.

Q. I beg pardon?

A. With several private concerns after that.

Q. Do you have any recollection of about how much you earned at these various places?

A. Well, I earned various salaries in each place, but on an average I would say over that period of years that I was in Dayton it would have been about \$30 a week on the average.

Q. And, was Mr. Friedberg employed at the time you first went to Dayton, or did he engage in business for himself?

A. He was engaged in business for himself.

Q. And, what was the name of that business?

[fol. 555] A. Consumers Merchandise Company, if I recall correctly.

Q. Did you have any knowledge of approximately what he made in that business?

A. Oh, I can't say that I do really recall.

Q. Whatever he made, who took charge of the money?

A. I did.

Q. Did he or did he not continue to turn the money over to you?

Col. Windom: Object.

A. He always turned the money over to me.

The Court: Sustained. The question is leading.

Q. State what he did with the money he earned from the business.

A. He turned it over to me.

Q. Who took care of, I guess we will call it, the family budgeting?

A. I did.

Q. Who did the marketing?

A. I did.

Q. Who kept the money?

A. I did.

Q. How long did Mr. Friedberg engage in this business that you just referred to while you were in Dayton?

A. I don't recall exactly. I couldn't say, Mr. Sillman.

Q. Was there any time while you lived in Dayton that he gave that business up?

A. Yes.

Q. Did he go to work for somebody else?

[fol. 556] A. Yes, he did.

Q. For whom did he work?

A. He worked for the Naval Ordnance Plant, and then he worked for a private individual under the name of American Mill Tailors, I believe, or American Tailors, something like that.

Q. In Dayton, Ohio?

A. Yes.

Q. While he worked for the Naval Ordnance Plant, Mrs. Friedberg, do you have any recollection of approximately how much he made?

A. No, I think you would have to ask him that.

Q. What happened to his pay envelopes?

A. I used to get those every week, or, I believe it was every week they paid. I am not sure if it was every week or every two weeks.

Q. And, did you continue to take charge of the money?

A. I always took charge of the money.

Q. Now, when he went to work for the American Mill Tailors at Dayton—

A. Yes.

Q. —do you have any idea of how much he earned there?

A. Well, I know there were times he used to earn as high as \$125 a week. That's including his commissions. I don't say always, but there were times that he made \$100 and so on, and sometimes less, of course. It wasn't always the same.

Q. What happened to the money earned in that employment?

A. Well, he always turned it over to me.

[fol. 557] Q. Did you save any of that money?

A. I saved every cent I was possibly able.

Q. What living quarters did you move to when you went to Dayton?

A. We lived in furnished rooms there most of the time until about a year before we came to Columbus.

Q. How long was it that you and Mr. Friedberg lived in Dayton, how many years?

A. Five years and a half, as well as I can remember.

Q. I beg pardon?

A. Five years and a half.

Q. And from Dayton where did you move?

A. To Columbus.

Q. Where did you move to, what street, when you moved to Columbus?

A. Bryden Road.

Q. Do you remember the year that you moved to Columbus?

A. It must have been '22 or '23. I can't be too certain of it.

Q. You say '22 or '23?

A. I think so.

Q. Now, during the time that you lived in Dayton, state whether or not you did or did not have a safety deposit box?

A. I did.

Q. What was the name of the bank, if you recall, in which you had that safety deposit box?

A. Dayton Savings and Trust Company.

[fol. 558] Q. During the time that you lived in Dayton, state whether or not you purchased any bonds. Government bonds?

A. Yes, we did.

Q. Do you have any recollection approximately how many bonds you had while you lived in Dayton?

A. Well, I think it was in the neighborhood of around \$8000.

Q. Did you and Mr. Friedberg have an automobile while you were in Dayton?

A. We bought one, yes, shortly before we left Dayton, yes.

Q. What kind of an automobile was that?

A. A Nash.

Q. Was that a new car or used car?

A. A new car.

Q. How was that car disposed of? What happened to that car after you moved to Columbus?

A. Well, shortly after we came to Columbus we bought a duplex and we traded that car—that is, we gave that car in as part payment.

Q. Now, in addition to the bonds, Government bonds, that you referred to, did either you or Mr. Friedberg have any securities or stocks?

A. I think Mr. Friedberg had some stocks.

Q. Was it a substantial amount?

A. No, not a very substantial amount.

Q. When you moved from Dayton to Columbus, do you have any recollection approximately how much cash you might have had?

A. To the best of my knowledge I think around—cash, did you say?

[fol. 559] Q. Yes.

A. That's exclusive of bonds or anything else?

Q. I am talking about currency.

A. About \$15,000.

Q. Mrs. Friedberg, you are not, I take it, giving me that as an absolute figure, are you?

A. No, I can't give you an absolute figure on anything because it is too far back. My memory isn't quite that good. I am just human.

Q. Well, you came over to Columbus back in 1922 or 1923, moved to Bryden Road and—incidentally, before you came over to Columbus, what was the last employment Mr. Friedberg had, with what company?

A. Before he came to Columbus?

Q. Yes.

A. The Buckeye Tailoring Company.

Q. Now, the Buckeye Tailoring Company—who was all interested in that company in Dayton, Ohio?

A. Mr. Weiss and Mr. Cohen, and Dave.

Q. Do you know whether your husband purchased any stock in that company?

A. Yes, as nearly as I can remember. It was a corporation.

Q. When *when* you and Mr. Friedberg moved to Columbus, was that the occasion of the Buckeye Tailoring Company business being moved to Columbus?

A. Yes.

Q. That was the reason why you moved to Columbus?
[fol. 560] A. Yes, that is the reason why we moved here.

Q. Now, the Buckeye Tailoring Company, I am talking about the old corporation.

A. Yes.

Q. That's the one in which you say Mr. Weiss and Mr. Cohen and your husband were in business. Where did it first start up business in Columbus?

A. You mean the location?

Q. Yes.

A. On Main and Fifth. I don't remember the name of the building.

Q. Do you have any recollection when you came from Dayton to Columbus of bringing your family savings, you or anybody else, bringing them here?

A. Yes, I brought them here.

Q. Do you recollect that?

A. Yes, I do.

Q. Have you lived in Columbus since that time when you first moved here in 1922 or 1923?

A. Yes.

Q. After you moved to Columbus did you work?

A. Yes, I—after I moved? No, I did not.

Q. What did you do after you moved to Columbus?

A. I stayed at home and kept house.

Q. When was Elaine born?

A. In 1925.

[fol. 561] Q. How much rent did you pay when you moved to Columbus? Do you remember that?

A. Yes, I do.

Q. What was that amount?

A. We paid \$55 and I had Mr. Weiss live with us.

Q. I will ask you that question. I want to know if you remember the amount?

A. Yes, I do. \$55.

Q. Did you have any boarders or roomers?

A. Yes, Mr. Weiss lived with us at the time.

Q. In other words, Mr. Friedberg's associate, Mr. Weiss, lived with you?

A. Yes.

Q. How much did he pay?

A. He paid me \$45 a month.

Q. So that left a net rental of \$10 a month?

A. That's right.

Q. What did you do about the house in those days?

A. Just what do you mean? I kept—you mean what did I do?

Q. I will ask it this way. Who did the cooking?

A. I did. I did everything in the house.

Q. Did you do your own washing?

A. I did my own laundry. I did my work entirely, and I sewed for myself, and then when the children were born I sewed for them, too. I did everything that I was possibly able to do about the house.

[fol. 562] Q. Now, to be specific, state whether you did or did not do your own housework?

A. I did.

Q. Did you ever have a maid?

A. No.

Q. State whether you did or did not do your own washing, that means, your family's washing?

A. I did.

Q. Did that include Mr. Weiss' washing and laundry?

A. Yes.

Q. You never hired that out?

A. No.

Q. State whether you did the cooking?

A. I did.

Q. During the entire time that Mr. Friedberg and you lived here in Columbus, while he was employed by the old Buckeye Tailoring Corporation, during all those years what happened to his pay envelopes or pay checks?

A. He always brought them home to me.

Q. And, does that mean that he brought them home intact?

A. Yes, intact.

Q. And who took charge of the money all those years?

A. I did.

Q. Did you save the money?

A. I saved every penny I was possibly able to.

[fol. 563] Q. When you first moved to Columbus did you open up a safe box?

A. When I first moved to Columbus, you say?

Q. Yes.

A. Yes.

Q. And can you recall the bank in which you had that safe deposit box?

A. As nearly as I could remember, it was the Columbian Building and Loan Association.

Q. And, then, was there a time when you gave up that box and opened a box in some other bank?

A. Yes.

Q. And, can you tell us the names of any other bank in which you had safe deposit boxes?

A. Oh, we had one in the City National.

Q. Yes.

A. And Franklin.

Q. Yes. Did you ever have a box in the Market Exchange Bank?

A. Yes. I still have it there.

Q. Did you ever have a box in the Buckeye Building and Loan?

A. Yes.

Q. Did you have a box in the Allemania Savings and Loan?

A. Yes.

Q. Did you ever have a box in the Franklin Savings and Loan?

A. Yes.

Q. You said that you had a box in the City National?
[fol. 564] A. That's right.

Q. Did you ever have a box in the old Bank of Commerce, the one which preceded the City National in Columbus?

A. Yes, I think—it was then named National Bank of Commerce and later changed, wasn't that the way it was?

Q. That was the former City National Bank?

A. Yes, that's right.

Q. And your first box in Columbus was in the Columbian Building?

A. Columbian Building.

Q. Now, tell the jury, Mrs. Friedberg, whether you kept the family savings in a box at all times or whether you

ever kept the family savings or part of them at the house?

Col. Windom: Object. It is a leading question.

The Court: Yes, the question is suggestive. Let her tell what she did with them, if anything.

Q. What places did you keep the family savings, Mrs. Friedberg?

A. Well, I always had a box, but there were times I kept my money at home, too.

Q. And, when you kept the money at home, what did you keep it in?

A. I had a cedar chest.

Q. When did you acquire that cedar chest?

A. Shortly after I moved to Columbus.

Q. Do you still have that cedar chest?

A. I do.

Q. Where did you buy it from?

[fols. 565-567] A. Morehouse-Martens at the time.

Q. I beg pardon?

A. Morehouse-Martens.

Q. You say you still have it?

A. I do.

Q. State whether or not that has any lock or any—

A. Yes, it has a lock.

Q. From the time you and Mr. Friedberg were married in 1915, on down to the present time, did you ever buy any jewelry?

A. No.

Q. From the time that you and Mr. Friedberg were married down to the present time, did you ever take any vacations?

A. No, sir.

Q. Who made the children's clothes?

A. I did.

Q. Did you ever purchase them any place?

A. No, I made them.

Q. When you say made them, you sewed them?

A. I sewed them.

[fol. 568] Q. Where did you get your furniture that you [fol. 569] moved from Dayton to Columbus?

Col. Windom: I object. It is a leading question and assumes that they did.

The Court: Yes.

Q. Did you move any furniture from Dayton to Columbus?

A. Yes, sir.

Q. Where did you get it?

A. I got it in Dayton from Capital Company, at the time.

Q. What happened to that furniture?

A. Well, as a matter of fact, I have most of it yet.

Q. In other words, you still have the furniture that you had when you moved from Dayton?

A. Yes.

Q. Did you buy anything?

A. Since then?

Q. Yes.

A. Just some small things now and then. Not very much. But the basic things I have.

Q. Did you ever spend money on theaters?

A. No, that's something we have deprived ourselves of; the pleasures that other people have indulged in we have never had.

Q. Did you ever spend money on picture shows?

A. No, sir, we didn't. We didn't do anything like that. We have never indulged in any parties, smoked or drank or did anything like that, and that's the reason I was able to save everything that I have.

[fol. 570] Q. Mrs. Friedberg, are you able to recollect and tell us now how much your savings were and what form they were in in any particular year?

A. I can't now, no.

Q. Now, during the years that you were saving did you keep any tally of what you had?

A. Yes, I did.

Q. Tell us just what the form of that tally was. How did you keep track of what you had?

A. I always kept a memorandum on a sheet of paper for my own personal use.

Q. I am sorry—

A. I say, I kept a memorandum on a sheet of paper of some sort, no particular kind, and I always kept it for myself.

Q. State whether or not you knew at the time how much you had?

A. I always knew, Mr. Silliman, at the time.

Q. And, in this tally you would keep during the years, would you keep a separate tally of whatever was cash and whatever was in any other form?

A. Yes, I enumerated all my assets, whatever was in cash or in any other form.

Q. Now, if cash was used for an investment or purchase, [fol 571] what did you do to the tally, to the little memorandum?

A. I would put on my memorandum, of course, deduct that amount from the cash and put down whatever I did with the money.

Q. And where would you keep this memorandum, usually?

A. I always kept it in my handbag.

Q. Now, if you cannot recollect specifically at this time how much you had at any particular year, I will ask you, Mrs. Friedberg, if you recollect any incidents, anything unusual, that may have happened that might refresh your recollection as to what you may have had at the time? Do you remember any incidents?

A. I can't say that I particularly——

Q. Well, let's see if I can refresh your recollection this way. You had no automobile after you traded in the Nash?

A. No.

Q. And how long was it until you got an automobile?

A. We got one in 1936.

Q. Was that in 1936, was that an automobile?

A. Yes.

Q. Just prior to that did you have any other automobile, used automobile?

A. I don't remember.

Q. But, you do recall in 1936 a new automobile?

A. Yes, I do.

Q. What make was that automobile?

A. Pontiac.

[fol 572] Q. Do you recall any incident in connection with that new automobile that might help refresh your recollection as to what you had accumulated?

A. Well, I think we took a ride one evening.

Q. Who is we?

A. Dave and I, and I guess we felt in pretty good spirits at the time, and just happened to remark——

Q. You will have to talk louder.

A. ——and Dave just happened to remark that it went pretty well over the fifty mark, and I says, "Yes, pretty well, quite far above that," and I told him, "Let's put a stone on that," meaning to forget it, that it even existed.

Q. When you said, "Let's put a stone on it," did you mean not to spend it?

A. Yes.

Q. Put it away?

A. Put it away.

Q. Some people use the expression "Salt it away."

A. I suppose that's what you would call it.

Q. You said, "Let's put a stone on it"?

A. Yes, that was my way of putting it.

Q. Now, on the basis of the recollection of that incident, in 1936, can you tell us approximately how much you had, or does that refresh your recollection as to any amount?

A. No, I can't remember the exact amount.

[fol. 573] Q. Well, was the amount in excess of \$50,000?

Col. Windom: I object.

The Court: Sustained.

A. Oh, yes, it was far in excess to that, Mr. Sillman.

Mr. Sillman: When there is an objection let the Court rule, please.

The Court: The Court is sustaining the objection. The question is suggestive and leading.

Q. Could you give us your best recollection, your best estimate, within whatever limits you can, of how much you had at the time this conversation took place between you and Mr. Friedberg?

A. No, I couldn't, Mr. Sillman.

Q. Now, I notice in the year of 1942 you and Mr. Friedberg made some purchases of Government bonds. Do you recall that?

A. Well, in 1942 I began thinking about it.

Q. I beg pardon?

A. I began thinking about purchasing bonds. I don't

know whether we have purchased any; if we have, it was very little.

Q. I notice that in 1944, 1945, there were considerable purchases of war bonds.

A. Well, you see—

Q. Now, wait a minute, do you have a recollection of those purchases in 1945?

A. Yes, I know I bought bonds then; certainly.

Q. Well, will you explain how you happened to purchase [fols. 574-578] bonds? You kept your savings in cash.

A. Well, as I say, in 1942 I just began thinking about it, and then when the drive came on for war bonds I figured that—I bought a little in '43 and then I bought some in '44. Then I figured I might just as well invest it, it is as safe as anything, and I was getting a little on it beside, so I bought heavy then.

Q. Up to that point you said that you had had that feeling of security in cash?

A. Well, of course, I did at the time, but a person could change their mind, Mr. Sillman, and I possibly just changed my mind at the time.

Q. Well, the bonds that were purchased, Mrs. Friedberg—out of what funds were the bonds purchased?

A. Out of the cash I had.

Q. And, by the cash you had, what cash do you mean?

A. The cash in the vault.

Q. And the funds that were invested in savings accounts during these years of '44, '45, '46 and '47, the funds that were invested in savings accounts in these years '44, '45, '46 and '47, where did those funds come from?

A. The funds that I had.

Q. That went into bank accounts?

A. Well, it was money I saved.

[fol. 579] Q. Whose money was it in the box, Mrs. Friedberg?

A. Mine.

Q. You considered it yours?

A. Yes, I did.

Q. What is your reason for saying that?

A. Because I saved every penny of that money myself.

Q. There has been some testimony concerning two ac-

counts, small accounts, in the name of the children, Wayne and Elaine.

A. Yes.

Q. Your name also appears on there, Frances Friedberg. Whose money is that?

A. That's their money.

Q. Who did the banking for the children?
[fol. 580] A. I did.

Q. And, how would you receive money from them for these small savings accounts that they had?

A. Just what do you mean, Mr. Sillman?

Q. Well, if you did the banking, where did the money come from?

A. They worked for it.

Q. And, what did they do with it?

A. They saved it. I banked it for them.

Q. Did they give it to you to bank for them?

A. Yes, oh, yes.

Q. What work did Wayne do?

A. Wayne carried papers from the time he was a little boy, and then he worked in various other places, drug stores, and worked in a machine shop, he worked in our place after school. He also worked, I believe, some place on Long Street. I don't recall who it was for. I believe it was Ruben, if I am not mistaken, and he also worked for some wholesale jewelry house here, too.

Q. Would he, from time to time, give you any money to save for him?

A. They always gave me their money.

Q. He is not in the city now?

A. No, he is in the service.

Q. Where did Elaine work?

A. Well, Elaine worked at the University Hospital.

Q. Where did she work before that?

[fol. 581] A. In Lazarus.

Q. How old was she when she started working?

A. She was still in high school.

Q. Did the same thing happen concerning her money?

A. Yes.

Q. Did she ever work out of town?

A. Oh, yes, after she graduated from college.

Q. Do you know what happened to her money when she worked out of town?

A. She always sent me her money to deposit.

Q. Did you also make withdrawals for the children?

A. Yes.

Q. Now, incidentally, Mrs. Friedberg, the two accounts in the First Federal, one in the name of Wayne and yourself, and the other in the name of Elaine and yourself, were in your marriage name, Frances Friedberg, were they not, according to the records?

A. Yes.

Q. And, did you also have a personal account at the bank?

A. I did.

Q. At the same bank?

A. Yes.

Q. And, how did you carry that account, in what name?

A. I carried that account in the name of Handler. That was my maiden name.

Q. Have you ever used your maiden name on prior occasions?

[fol. 582] A. Oh, yes, I have used it all through my life practically.

Q. Do you attach any special significance as to why that account was opened in your maiden name Handler?

A. No, but I have used it all through the years. I continued working after I was married for many years, and I have always been called by that name, and it is just as common for me to use that name even to this day, as it is Friedberg.

[fol. 583] Q. You testified that you had always received Mr. Friedberg's pay check, pay envelope, when he worked for the Buckeye Tailoring Corporation. Now, while he was employed and receiving a pay envelope from the Buckeye Tailoring Corporation, did you ever receive any other monies from him?

A. From Dave?

Q. Yes.

A. No.

Q. Do you recall—

A. Well, he used to collect—

The Court: Just a moment. The witness has answered no.

Q. To refresh your recollection, I will ask you whether you did or did not ever advance any money to him for out of town trips?

A. Yes, I did.

Q. Do you know whether he was repaid for those out of town trips?

A. Yes, I repaid myself. That was my money and I repaid myself.

Q. My question has confused you. I am talking about when he worked for the Buckeye Tailoring Corporation.

[fol. 584] A. Oh, for the old corporation.

Q. That's right. Did you ever advance any money to him, then, for trips?

A. I don't recall.

[fol. 585] Q. When did Mr. Friedberg start up the business for himself?

A. The beginning of 1942.

Q. Now, when did you go to work?

A. Well, I used to go down for about an hour or so through 1944 when Miss Connell was still there, and when Miss Connell left I took over and came down in 1945.

Q. Did you spend any different time there in 1945?

A. Yes, I had to put in practically the entire day.

Q. Who took care of the books and the records and did the bookkeeping and things like that after Miss Connell left?

A. Well, I did, to the best of my ability.

Q. And, did that continue after 1945?

A. Yes, I stayed on.

Q. Until what time?

A. Until the present time.

Q. You mean '45—

A. '45, '46, '47, '48, '49.

Q. And you are still there?

A. I am still there.

Q. Has there ever been a bookkeeper employed since Miss [fol. 586] Connell left?

A. No.

[fol. 587] Q. Mr. Friedberg, you testified, started in busi-

ness in '41 or '42, and I am going back to that time. Where did he get the money to start the business with?

A. I advanced it to him.

Q. I beg pardon?

A. I gave it to him.

Q. And, do you know whether bills for merchandise were paid in cash or paid on a time basis? Do you have personal knowledge of that?

A. In cash, as far as I know. I wasn't active at the time. I advanced the money. I do know they paid them mostly in cash because he had no credit.

Q. You say you did advance money?

A. I did, yes.

Q. To whom did you give that money back in '41, '42, '43, '44?

A. Sometimes I would give it to Miss Connell and sometimes I would give it to Mr. Friedberg.

Q. Did you keep track of the advances that you made?

A. Yes, sir.

Q. And, how did you do that?

A. I kept a memorandum.

[fols. 588-590] Q. I beg pardon?

A. I kept a memorandum of it.

Q. And, did you make those advances with an expectation of being paid back?

A. Oh, certainly.

[fols. 591-592] Q. Do you recall any occasions when money was advanced to build up the bank account?

A. You mean for the firm?

Q. Yes.

A. When I advanced money?

Q. Yes.

A. Oh, yes, many occasions.

Q. That's what I am trying to ask you. I am trying to ask you to explain to the jury the purpose of these different advances.

A. Oh, well, of course, you see, Mr. Friedberg hadn't any credit and our business was run on a COD basis, and we always had to have money on hand to meet those COD's when they were brought in.

[fol. 593] Q. Were these miscellaneous advances that you just described, were they ever repaid to you?

A. Yes, I tried to repay myself whenever an opportunity presented itself.

Q. And, what do you mean by that. Explain that a little in detail.

Q. Well, you see, whenever I would find we were sort of caught up, that is, the money was coming in fairly well in the business and I didn't require as much cash, I would repay myself.

[fol. 594] Q. Mrs. Friedberg, when Mr. Friedberg was ready to gather his figures together for his income tax, in the years 1945, 1946 and 1947 when you were taking care of the books, who furnished him with the figures?

Col. Windom: I object. That's a leading question.

Mr. Sillman: I don't see anything leading about it.

The Court: There is no indication in the record, Mr. Sillman, that anyone—

Mr. Sillman: I am asking her who furnished the figures.

The Court: If she has knowledge who did this, she may answer, but, then, the question is suggestive. Let her tell what she knows about it. Objection is sustained.

Q. Put it this way. Do you know who furnished Mr. Friedberg with figures, if anyone?

Col. Windom: I still object.

The Court: Sustained.

Q. Did anybody furnish Mr. Friedberg with figures?

A. I did.

Q. Did anyone?

The Court: You may answer yes or no.

A. Yes.

Q. Who furnished him with the figures?

A. I did.

Q. Where did you get the figures?

A. Out of the books, the cash book.

Q. By whom were those figures in the book written?
[fol. 595] A. By myself.

Q. By whom were those books kept?

A. By myself.

Q. Now, that's for the year of '45?

A. Yes.

Q. How about the year of '46?

A. I did.

Q. And how about the year of '47?

A. I did.

Q. And '48, so far as that's concerned?

A. Yes.

Q. In other words, from the time that you started keeping the books?

A. That's right.

Q. In furnishing him the figures, what figures did you include for gross income?

A. I took the figures out of the cash book, the money that went into the bank, and then I took the sales and furnished him with that.

Q. Go ahead.

A. And then, the expenditures from the checks that were issued.

Q. But, from the cash book you took the entries that were included in the cash book?

A. That's right.

Q. There appears in the cash book at numerous places, round figure entries designated D. Friedberg Loan, or D. Friedberg.

[fol. 596] A. Yes.

Q. Some designation similar to that. State whether you did or did not include those items in the gross income figures that you furnished?

A. I did.

Q. Now, I want to see if you can give us some explanation.

Mr. Sillman: Mark this Defendant's Exhibit 2, please.

(Defendant's Exhibit 2 was marked for purposes of identification.)

Q. Handing you Defendant's Exhibit 2, please tell the jury what that is?

A. This is the cash book, the money that was put into the bank.

Q. Please tell us when that cash book started, what date?

A. November 1944.

Q. Now, go back to the end and tell us how far that carried on?

A. To the end of December 1947.

Q. So that, that cash book, then, covers the period November '44 to December '47?

A. That's right.

Q. Of course, there are other cash books for other years?

A. Yes.

Q. But, that's the one that you kept?

A. Yes, sir.

Q. Now, Mrs. Friedberg, I want you to turn to the first item that is designated D. Friedberg Loan. What is the date of it, please?

A. March 22.

[fol. 597] Q. What year?

A. 1945.

Q. That's the first Friedberg Loan entry?

A. That's right.

Q. Please tell us what that entry is and explain it to us.

A. Now, that is a loan of \$500 to the business.

Q. Yes.

A. That I advanced and—do you want me to explain in detail?

Q. Is there any designation there of what it was used for?

A. Yes. That morning a COD package of woolens came from New York, I believe, before I went to the bank, and I had this in cash, so I used—\$225 of this was paid out for that package, to pay for that package.

Q. What happened to the \$275 balance?

A. The balance went right into the bank.

Q. And, was that entire amount treated as income by you at the end of the year?

A. Yes, sir.

Q. Now, were you repaid that \$500?

A. You mean at the time?

Q. At any time?

A. Well, I don't recall now, Mr. Sillman, but in '45 and '46, I think, there was an overlap.

Q. Did you keep track of that?

A. I kept track of it at the time, yes.

Q. Now, turn to the next item designated D. Friedberg

[fol. 598] Loan. Give us the date and the amount of that.

A. On April 4.

Q. April 4 or April 13, which is it? If it is the 4th, tell me.

A. There is one on the 4th.

Q. What is the amount?

A. \$200.

Col. Windom: What year?

Mr. Sillman: 1945.

Q. Is that right, Mrs. Friedberg?

A. That's right.

Q. Read that complete entry?

A. D. Friedberg Loan.

Q. And the amount?

A. \$200.

Q. Is that all?

A. That's all.

Q. Now, please turn back to the March 22, 1945, the first one, and read that completely. Read what you have got written.

A. "D. Friedberg Loan, \$500, paid out \$225 for a package to Suskin & Berman, see check book." Now, by that I meant I put the entry in to show the entire transaction, that I loaned the \$500 and paid out the \$225 for this package, which really \$275 went into the bank, actually, but the loan was for \$500 because this bill was paid for \$225.

Q. Have you read that item complete, is that all that appears there?

A. Yes.

[fol. 599] Q. Now, concerning the next entry. Now, you just read the March 22, 1945 entry, and you just testified to and read the April 4, 1945, \$200 item. Can you tell us whether that item is an actual loan or what it is?

A. I can't, Mr. Sillman.

Q. I beg pardon?

A. I am sorry, I don't recall.

Q. What else would it be, Mrs. Friedberg, if it wasn't money actually loaned?

A. I had carried a miscellaneous item which included various items in that account, you see.

Q. When you say miscellaneous item, what do you mean?

Do you mean miscellaneous income?

A. Yes.

Q. How would that miscellaneous income—how did you, let's put it this way, from that date on, how did you handle the miscellaneous income?

A. Well, I didn't enter each—I didn't list each item individually, but I accumulated the money in an envelope and then deposited it as a round, lump sum.

Q. And, after you made the deposits in round figures or lump figures, how did you record them from that time on in the book?

A. As D. Friedberg Loans.

Q. As what?

A. As D. Friedberg Loan account.

Q. Then, does the designation D. Friedberg Loan, from [fel.600] that date on, indicate a loan or does it indicate miscellaneous income?

A. It indicates miscellaneous income, plus the loan.

Q. You say that there were some loans made in that same kind of a deposit?

A. Yes.

Q. And yet the round figure was treated by you as income?

A. Yes.

Q. Will you explain to us how you happened to use that kind of a designation.

A. Well, frankly, I don't know any other explanation except that I started the first item that way and I just didn't think any more of it and just continued that way. I never thought of any other word for it and I just continued that way.

Q. And from that time on there, there appears throughout these books—are there any more D. Friedberg Loans?

A. Oh, yes, I continued treating it that way.

Q. Up to what time?

A. I still do.

Q. Now, Mrs. Friedberg, I will put these questions to you. I want you to try to explain just what went into the D. Friedberg Loan entries, just how they were handled and just what they consisted of. Now, let me put the question to you like this. From that time, 1945, that is, the D. Fried-

berg Loan entries subsequent to March 22, 1945—perhaps I should confine it to the years of 1945, 1946 and 1947—state whether those amounts were treated by you as income?

[fol. 601] A. They were.

Q. State whether or not those amounts were furnished by you to Mr. Friedberg as gross income, part of his gross income?

A. Those loans?

Q. Right.

A. Yes.

Q. State whether or not they were treated exactly the same as if they were designated miscellaneous income?

A. Yes.

Q. State whether or not each one of those entries from that date on, from the first one on, represent an actual deposit in the bank account, the business bank account?

A. They do.

Q. Now, what sources of miscellaneous income did Mr. Friedberg have in the years of '45, '46 and '47?

A. Well, we had what you call ready made stock suits.

Q. Yes.

A. And some alterations and repairs, and we had just a few skirts and a few caps.

Q. Do you have any recollection of any special alteration jobs in substantial amounts that you might recall?

A. Yes.

Q. And, with whom were they?

A. With the Lazarus Company, and then, I believe, with the Government.

[fol. 602] Q. Now, aside from those two special jobs, I will ask you whether the income from alterations and repairs was substantial or what? What was it?

A. Well, the alterations—aside from those they weren't very substantial, no.

Q. Did you have any income from any cleaning and pressing?

A. That was treated in the miscellaneous.

Q. I believe you testified that there was some ready made suits?

A. Stock suits, yes.

Q. When that miscellaneous income came in, who handled it?

A. I did.

Q. What would you do with that money, checks, or whatever it may be? When I say money, I mean cash or—

A. That particular money I accumulated, as I said before. I accumulated until I got a substantial amount.

Q. Where would you keep it?

A. I kept it in the office there.

Q. Well, I mean, is there any place—

A. Well, I had it in a separate envelope, and in the evening, at night, I would always take it home with me.

Q. Did you have a cash register or a cash drawer?

A. No, I kept it in a drawer.

Q. In a drawer?

A. We have a steel file and I kept that in that steel file.

Q. That's where miscellaneous income went?

[fol. 603] A. Yes.

Q. What did happen to that miscellaneous income from the envelope and steel drawer?

A. Well, I deposited it as I needed it. What I mean to say—we used to have COD's, as I said, and I would use that money to pay off the COD's, and then of course, there were times, as I say, I would deposit that money in lump sum, round figures.

Q. Now, if cash out of the drawer, if money was used to pay COD's, it was in the form of cash, wasn't it?

A. Yes.

Q. Now, if cash was used to pay COD's, how did you keep track of those payments?

A. Of the COD's?

Q. Yes. Were any checks or anything issued to keep track?

A. Yes, I would always replace that money by a check.

Q. What kind of a check would that be, whose check?

A. The firm check, the Buckeye Tailoring check.

Q. Were there any other checking accounts except that one?

A. No, sir.

Q. And, the check would be written in what amount, in reference to the COD?

A. Well, usually I would write it in round figures or get a few bills together and replenish that cash.

Q. So that when you used cash out of this miscellaneous income drawer to pay a COD bill, you replaced that cash by a check drawn on the Buckeye Tailoring account [fol. 694] count?

A. Yes.

Q. Now, was the check deposited?

A. That particular check?

Q. Yes.

A. Yes.

Q. Were all of them deposited?

A. All our checks were deposited, yes.

Q. That's how you kept your record of what was spent for COD's?

A. Yes.

Q. It would be a check drawn by the Buckeye Tailoring Company payable to whom?

A. To cash.

Q. And deposited in the Buckeye account?

A. That's right.

Q. It meant a withdrawal and the buildup of the account all at once, didn't it?

A. Yes.

Q. The bank account?

A. Yes.

Q. Was there any other purpose in writing that check other than to keep a record?

A. Well, I replenish that cash in the envelope.

Q. Whenever this amount of cash in the envelope accumulated, how would you determine when you were going to make a deposit in the bank or how much to [fol. 695] put in the bank?

A. Out of the miscellaneous account, you mean?

Q. Yes.

A. Well, you see, when we had, as I said before—we had no credit actually and we always had to have money on hand and we tried to keep the little credit that we did have, if we had any at the time, we tried to pay our bills

promptly in order to build up, establish our credit on a sounder basis.

Q. How would you determine when you were going to deposit some of the funds, cash or checks, that were in this account, or this miscellaneous income drawer?

A. Well, our checking account was very low. Our cash was low in the bank.

Q. Now, when you would make a deposit, what would you do? Follow that through, please.

A. If I didn't have enough money in the envelope I would get some of my own money and add to it. It all depended on how much I needed, and I would enter it in the cash book as D. Friedberg Loan account and make a deposit of it.

Q. That would include money that you loaned to the business, as you say?

A. Yes.

Q. Or, would some of the D. Friedberg Loans include only miscellaneous income?

A. Yes, certainly.

[fol. 606] Col. Windom: Pardon me, you have asked two questions. Which is Mrs. Friedberg answering?

Mr. Sillman: I thought she answered both of them.

Col. Windom: I think they are conflicting. I object and move to strike the answer until it is clarified.

Mr. Sillman: I will be glad to do that.

Q. The deposits that you made, you have testified, would sometimes include actual loans, actual money loaned by you to the business?

A. Yes.

Q. I ask you whether the deposits would sometimes not include loans?

A. Yes.

Q. And include only and exclusively miscellaneous income?

A. Yes.

The Court: Now, ladies and gentlemen of the jury, the Court intends to take a brief recess, and during the intermission you must follow the instructions heretofore given you by the Court.

(A brief recess was taken.)

By Mr. Sillman:

Q. Mrs. Friedberg, who decided to handle this miscellaneous income in the fashion in which you did handle it?

A. I did.

Q. Did you ever discuss with Mr. Friedberg your system of keeping track of that miscellaneous income?

A. No.

Q. What else were you doing in 1945 beside working [fol. 607] down at the store?

A. I kept my home and took care of my family besides being down there.

Q. Speak up.

A. I took care of my home and family beside being down there all day.

Q. And, what was your reason for entering this miscellaneous income in this lump sum fashion?

A. Well, just to save time, lack of time.

Q. There has been testimony, Mrs. Friedberg, that at one point the entries in this cash receipts book start in pencil and continue in pencil. Will you turn to the cash book where the entries start in pencil?

A. Yes.

Q. What's the date, please?

A. October 10, 1947.

Q. How do they happen to be in pencil from that time on?

A. That's the day the agents came and took our books.

Q. Did they take that particular book?

A. Yes, sir, this was one.

Q. How did you keep track of the records and income and matters of that kind when they had the book?

A. I then started to write them on sheets which I have here.

Q. And, how did you write them, in ink or in pencil?

A. In pencil. Here they are.

Q. Now, when did you make the entries starting on [fol. 608] October 10, 1947—is that the date?

A. Yes.

Q. When did you start making those entries?

A. After the books were returned. After the book was returned to us.

Q. Did you enter the accumulated entries that you had kept track of in the meantime?

A. I did.

Q. Did you bring it down to date?

A. Yes.

Q. Prior to the time the agents commenced their investigation in October 1947, deposit slips contained the names of the maker of each check, did they not?

A. Yes.

Q. And, there has been some testimony that after the agents commenced their investigation you no longer entered the names of these customers in detail on—the makers of the checks on the deposit slips. Is that a fact?

A. Yes.

Q. Why did you stop?

A. Well, they went to our customers and molested them, and I thought that it is best not to put their names on any more.

Q. Prior to that you had put down the name of every customer or every maker of a check on the deposit slip?

A. Yes.

[fol. 609] Q. And, that's on up to October 10, 1947?

A. That's right.

Q. Now, going back to the time you started taking care of the books and records, the end of 1944, 1945, 1946 and 1947, who took charge of the income or receipts in the shop?

A. Prior to—

Q. From the time you started working full time, '45, '46 and '47.

A. Miss Connell.

Q. No, in 1945. Was she there in 1945?

A. You mean the money coming in?

Q. No. What I mean is, when Miss Connell left.

A. Yes.

Q. And you started working full time in 1945, and the years of 1946 and 1947, I am asking you who took charge of the receipts of the business?

A. I did.

Q. Who took charge of recording the receipts?

A. I did.

Q. Where were the receipts recorded?

A. In the cash book.

Q. You have already testified about the miscellaneous income.

A. Yes.

Q. I am talking about all receipts now. Do you understand?

A. Yes.

Q. Just what source of receipts did Mr. Friedberg have [fol. 610] in this business?

A. Well, he had the wholesale accounts and then the retail accounts.

Q. Do you know what the wholesale accounts were?

A. Now, just what do you mean?

Q. Well, I mean, to whom were those sales made. Why do you call them wholesale?

A. Well, you see, those were kept entirely separate from the retail.

Q. Well, I don't think you understood me. Were those customers retail customers?

A. No.

Q. Now, what were they? Who were they?

A. They were dealers.

Q. That's what I am asking. That's called wholesale business?

A. That's right.

Q. How did you keep track of that?

A. We kept them entirely separate, each individual account.

Q. Did you have any invoices?

A. Yes, every order was entered in each dealers' account individually, and then each one was invoiced individually.

Q. And, you have records for the years of '45, '46 and '47—well, I will confine it to the time you were working. Do you have records for those years?

A. Yes.

Q. How would the dealers, the wholesale business, *who* [fol. 611] would those dealers pay; by cash or check?

A. Check.

Q. How would that come into the place, by personal delivery or mail or how?

A. By mail.

Q. And, what would happen to that, what did happen to it?

A. Well, I entered each check under each dealer's name, listed it separately under each dealer's name.

Q. Where did you make those entries?

A. In the cash book.

Q. In other words, those entries which you listed in detail—that is, that wholesale business you did list in detail?

A. Yes, sir.

Q. Could you just turn to any one there in the years of '45, '46 or '47, just to give us a sample, if you happen to remember one?

A. W. A. Crawford.

Q. Just read off one as a sample, give us the date and all.

A. W. A. Crawford, June 28, 1947, \$27.00. That's one of them. Walter T. Childs on June 10, 1947, \$59.45.

Q. Now, that's wholesale business?

A. Yes, sir.

Q. When the checks would come in in the mail, who would handle the checks in the business?

A. I did.

Q. What did you do with the checks, what happened to [fol. 612] them physically?

A. I made deposits for them.

Q. Where did you keep them?

A. I used to put them in my cash book every day until I was ready to get them ready for deposit, enter them in the cash book then, make the entry and then make my deposit.

Q. And when you made these entries in detail in the cash book did you check against the invoices?

A. Yes, sir.

Q. And then, as you deposited these checks, did you write the name of the maker of the check on the deposit slip?

A. Yes.

Q. And when you say deposit, do you mean deposited in the Buckeye Tailoring account?

A. That's right.

Q. That's the only checking account you had?

A. Yes, sir.

Q. Now, in addition to this wholesale business, and when I refer to wholesale business I mean just that kind of business, what other source of income was there?

A. The store; American Mill Tailors.

Q. What kind was that?

A. That's retail.

Q. Was that made-to-measure?

A. Well, we had the made-to-measure suits.

[fol. 613] Q. Now, when we say made-to-measure, I am talking about tailored-to-measure. Is that what you understand?

A. That's right.

Q. And, those tailored-to-measure suits that were handled under American Mill Tailors, were they all retail?

A. Yes.

Q. None were wholesale?

A. No.

Q. How did you keep track of those?

A. Well, we used to—we list the customers under American Mill Tailors by their names, individually.

Q. That is, the name of each customer?

A. Customer.

Q. Where would the name of each customer be entered?

A. Under American Mill Tailors.

Q. Was there an order book kept for those?

A. Yes.

Q. And, is that what you mean?

A. That's the order book I am referring to.

Q. And, the order book had the name American Mill Tailors?

A. American Mill Tailors.

Q. Now, where else, if any place else, did the name of the customer find itself entered?

A. In the cash book.

Q. And then, those entries were made in detail, were [fol. 614] they, by customers?

A. Yes.

Q. So that we have got two kinds of income, sources of income, that were entered in detail; by that I mean, the name of the customer and the amount?

A. That's right.

Q. The wholesale business and the tailored-to-measure retail business?

A. That's right.

Q. What other source of income was there besides those two?

A. The miscellaneous.

Q. You have already described how that was handled?

A. Yes.

Q. If someone had a suit cleaned and pressed, did you write that customer's name in detail?

A. No, I didn't.

Q. And if someone bought a ready-made suit, did you write that customer's name in detail?

A. No, sir.

Q. That was all handled as miscellaneous?

A. Miscellaneous.

Q. When you furnished Mr. Friedberg with the figures for his income tax returns, what sources of income did you include in the figures you furnished him for the years of '45, '46 and '47?

A. I included everything.

[fol. 615] Q. Well, did you include all of the wholesale?

A. All the wholesale and all the retail.

Q. When you say included them, what did you, did you add them up, or what?

A. Yes, I added them on the adding machine and gave him the totals.

Q. Did you add up all of the retail?

A. Yes, sir.

Q. And, did you add up all of the miscellaneous?

A. Yes, sir.

Q. Now, the miscellaneous was——

A. Included.

Q. ——in Friedberg Loan entries?

A. That's right.

Q. Did you include such items as the \$500 item which was actually a loan?

A. That's right, I did.

Q. You put that as income?

A. I did.

Q. And the next item you testified to, \$200, did you just add that in as income?

A. That's right.

Q. The same as you would a customer's check for \$29.50 or whatever it was, is that right?

A. That's right.

Q. And, then, furnished him with the total figure, which [fol. 616] represented his gross income?

A. That's right.

Q. Were there any other sources of income in this business in the years that you were there, other than the three types that we spoke of: wholesale, retail tailored-to-measure, and the miscellaneous income?

A. No.

Q. No other source. How about receipts when customers made a deposit, let's say, on a tailored-to-measure suit. Who would write out those receipts?

A. Well, sometimes Mr. Friedberg, and sometimes I would.

Q. When you made deposits which did you deposit first, cash or checks?

A. Well, the deposit could include both.

Q. But, if you had any preference in the deposit, which did you deposit first?

A. The checks.

Q. And, what was the reason for that?

A. Because we always needed cash on hand.

Q. Why would you deposit checks first instead of cash, if you had any preference?

A. That would save me drawing a check on the account.

Q. Did you have any interest in getting these checks cleared through the bank?

Col. Windom: Object.

The Court: Sustained.

[fol. 617] Q. Mrs. Friedberg, do you think that your records are perfect?

A. No, I don't.

Q. Do you think there might be some errors in them?

A. Oh, yes.

Q. Do you think that any income from a tailored-to-

measure suit could have found its way into the miscellaneous income instead of being entered in detail?

A. Yes, it is possible.

Q. I have called your attention to a series of them, probably about twelve, including Walter Shapter and Sam Roderick. Do you acknowledge those to be bookkeeping errors on your part?

A. Yes.

Col. Windom: I object.

The Court: Sustained.

Col. Windom: And request that the answer be stricken.

Q. Let me ask you. Should you have entered those in detail; that is, the name of each customer?

A. Yes, I should have, but I just didn't do it because it was a mistake.

Q. Did you enter them in detail?

A. No, I put it in miscellaneous.

Q. Did it go into income?

A. Yes, sir.

Q. And, was it part of the gross amounts that you furnished to Mr. Friedberg for his income tax returns?

[fol. 618] A. Yes.

Q. I questioned you earlier this morning, Mrs. Friedberg, about the temporary loans that you described, some of which you testified went into Friedberg Loan deposit, and I asked you whether you repaid yourself for those loans during each year in which the loans were made. What was your answer?

Col. Windom: I object. It has been answered six times.

The Court: Sustained. She has already testified to that, has she not? She may answer again. I think she has already answered.

Mr. Sillman: I hadn't recalled. May she answer?

Q. Give us your answer, please.

A. In the temporary loans?

Q. Yes.

A. Just about evened it up each year.

Q. You did say something about a possible carryover?

Col. Windom: I object. Your question indicates that you do know the answer. I object to that.

Q. Were there any carryovers from one year to the next?

A. Yes, there were in '45 and '46.

Q. Now, were those large or were they small?

A. No, they were large.

Q. And, did that represent a temporary loan that you described, or did it represent loans when the business started?

Col. Windom: I object. That's leading, again.

The Court: Yes, let her tell. Objection sustained.

[fol. 619] Q. Well, what did the carryover represent?

A. The larger amounts of money that I loaned; not the temporary loans.

Q. And, the large amounts of money you loaned when?

A. From the time we started.

Q. There appears in the book some entries which are called Friedberg accommodations; in the cash book that you kept. Will you explain what those were?

A. Yes, those were just checks that—I didn't have any personal checking account, and when I had to have a check for some particular item such as rent, or so on, I would deposit the cash for the amount and draw the check on the firm.

Q. And, would you make an entry of that amount in the cash book?

A. Oh, yes.

Q. Will you just turn to one and read one off, just as a sample?

A. There was one right here.

Q. Just to save time, you don't have to run through that. If you wrote a check——

A. Here is one.

Q. All right, read it off.

A. April 4, D. Friedberg accommodation check, \$65.00.

Q. From the amount can you tell us what that would be for?

A. Well, no, I couldn't.

Q. How much was your rent?

Col. Windom: Object.

[fol. 620] Q. Did you ever write a check or do you have knowledge of Mr. Friedberg writing a check on the business bank account for a personal expense when the money was not replaced, the same amount of the check?

A. Oh, no, no. Definitely not.

Q. And, what was your purpose of making those entries, calling them Friedberg accommodation?

A. I just followed Miss Connell's pattern. Miss Connell did that.

Q. Well, I mean, did that indicate that that was a personal expense to you?

A. Yes.

Q. Was that the reason for—

A. Yes.

Q. If you hadn't made an entry, how would you have known what the check was for?

Col. Windom: I object.

The Court: Sustained.

Q. Mrs. Friedberg, did you ever use any money from the miscellaneous income for personal expenses?

A. No, sir.

Q. Now, going to the safe deposit box, Mrs. Friedberg, which was entered in October 1947. Were you present at the time?

A. At the time?

Q. When the agents entered the box?

A. Well, you mean, was I present in the office at the time?

Q. Were you there when they opened the box, or was [fol. 621] somebody else there?

A. No. Mr. Friedberg was there.

Q. You were not there?

A. No, sir.

Q. How was that cash kept in the box, Mrs. Friedberg?

A. In envelopes.

Q. Did you go to the box at any time after the agents were there?

A. I don't recall.

Q. Well, to refresh your recollection, did you make a trip to the box with Mr. Weiss?

A. Yes.

Q. Do you remember that?

A. Positively.

Q. And, how soon was that after the agents had been to the box?

A. They were there on Friday and I believe we went there the next Tuesday. I think, the 14th, or somewhere around that date. I am not real sure.

Q. That's after the agents had been to the box?

A. Yes, sir.

Q. And examining the contents?

A. That's right.

Q. Do you know when the agents first contacted Mr. Friedberg or yourself?

A. Yes, sir, I believe the first date that Mr. Curtis came in was, I think, the 26th of September.

[fol. 622] Q. Now, between the date that the agents first came to see Mr. Friedberg or you and the date the agents entered the box, did you enter the box in that entire time?

A. No, sir.

Q. And, you say, they first contacted you sometime in September?

A. That's right.

Q. And they didn't come back to go into the box until sometime in October?

A. October 10, to be exact.

Q. And, from the time that they first came to see you or Mr. Friedberg, up to the time that they went into the box, you did not enter the box?

A. No, sir.

Q. Do you have any personal knowledge from your examination of the signature card, whether Mr. Friedberg got into the box in the meantime, or tried to get in?

Col. Windom: I object.

The Court: Sustained.

Q. You didn't, that's for sure?

A. That's for sure, yes.

Q. How did you keep the cash that was in the box in 1947?

A. I kept them in envelopes.

Q. Did you have any markings on the envelopes?

A. Yes, I had an indication, one M or two M, or whatever was in the envelope.

[fol. 623] Q. What would 1 M or 2 M mean?

A. A thousand or two thousand, whatever they contained.

Q. How did you happen to keep these envelopes in that fashion, Mrs. Friedberg? Can you give us any explanation?

A. No, I just always did it that way, Mr. Sillman.

Q. When you kept money at your home in the earlier years, how did you keep it there?

A. I usually kept it pretty much the same way. I kept it in my cedar chest until I would accumulate——

Q. Did you have any markings on those envelopes?

A. I don't recall.

Q. Did you have any designation——

Col. Windom: I object.

The Court: Sustained.

Col. Windom: She said she didn't recall.

Q. Was there any significance to the type of envelopes that were used in 1947?

A. No.

Q. Would you have any idea or could you give us any information about what kind of envelopes they were?

A. I just used the regular size envelopes.

Q. Were they new envelopes?

A. Not particularly, no.

Q. Were they anything that came to hand?

A. Beg pardon?

[fol. 624] Q. Were they anything that came to hand?

A. Yes, just most anything that—I very rarely take a new envelope. I take something that had been used.

Q. While you were at the shop from 1945, '46, '47, do you have personal knowledge of whether any checks were cashed for customers?

A. Oh, yes, numerous.

Q. Do you still cash checks?

A. I do.

Q. What would be the nature of those transactions when a check was cashed?

A. Sometime they would come in and pay some part of that check on account, or they would get their garment out and pay the balance, or deposit.

Q. What kind of checks would they be?

A. Mostly payroll checks.

Q. What would you do with the check after you cashed it?

A. Well, I deposited it.

Q. Where did you keep it before you deposited it?

A. In the cash book. I kept it with my other checks.

Q. Along with the other checks?

A. Yes.

Q. And, then, when you would make a deposit, you would deposit it along with other checks?

A. That's right.

Q. Would any of these checks ever be deposited in the [fol. 625] miscellaneous income deposit which you designated D. Friedberg Loan in the cash journal? Would they find their way into that kind of a deposit?

A. Yes, many of them.

Q. In other words, I take it, then, that you didn't make any effort to separate cash from checks?

A. No.

Q. But, checks went into the cash drawer and cash went in and deposits were made of whatever was on hand?

A. That's right.

Q. Would any of these checks be for any substantial amounts that you might recall?

A. Oh, yes.

Q. How big?

A. Oh, we used to get checks for \$100 sometimes. I don't know exactly the exact amounts, but they were for large sums as well as small sums.

Q. By the way, Mrs. Friedberg, when a check was cashed, a payroll check, how would you carry or list the name on your deposit slip? What name would you put on the deposit slip?

A. Payroll check.

Q. If you cashed the check, a payroll check for somebody, what name would be put on your deposit slip?

A. Well, I don't know if I put any. If I put any, it would be payroll.

Q. No.

Col. Windom: Object.

[fol. 626] Mr. Sillman: The witness has not understood me.

Q. You testified that when you made up a deposit slip and a check was deposited, that you listed the name in detail for that deposit?

A. Yes.

Q. Now, we were then talking about customers' checks.

A. Oh, I see. I beg your pardon.

Q. Now, when you cashed a check for somebody, which may have been a payroll check, whose name would you enter in that kind of a transaction when you made the deposit?

A. The customer's name.

Q. You didn't enter the company's name that made the check?

A. No.

Q. You always used the customer's name?

A. That's right.

Q. What was your general attitude toward this business?

A. Well, meaning whether I liked the business or not?

Q. That's right.

A. Well, I never had any great love for it, as far as that goes.

The Court: What does that have to do with the lawsuit?

Mr. Sillman: Probably nothing.

Q. Mrs. Friedberg, state whether you believe that the amounts which you furnished to Mr. Friedberg from the records that you kept for his income tax purposes, state whether you believe those figures to represent his entire income for the years for which you furnished them?

Col. Windom: I object.

[fol. 627] The Court: Sustained. That is a question for the jury to determine under the proper instructions from the Court.

Mr. Sillman: You may cross examine.

Cross examination.

By Col. Windom:

Q. Mrs. Friedberg, are you a member of an organized faith?

A. Just what do you mean, Mr. Windom?

Q. Are you a member of an organized church?

A. Yes.

Q. Do you believe in a Supreme Being?

A. I do.

Q. What church are you a member of?

A. Bryden Road Temple.

Q. Does your faith believe in an oath in the name of the Supreme Being?

A. We certainly do.

Q. Is there anything higher than an oath taken in the name of your God?

A. No.

Q. Absolutely nothing?

A. I wouldn't know of any.

Q. I believe you said you were married in 1915?

A. That's right.

Q. Where was Mr. Friedberg working at that time?
[fol. 628] A. New York.

Q. What firm?

A. I wouldn't remember.

Q. You don't remember where he was working?

A. Where he was working?

Q. Yes.

A. No.

Q. Were you working?

A. Yes.

Q. Where were you working?

A. At the Marietta Carter Company.

Q. How much were you making a month?

A. I was paid weekly.

Q. How much were you making a week?

A. \$25.00 a week.

Q. How much was Mr. Friedberg making?

A. I can't recall.

Q. Why can you remember what you made and not what he made?

Mr. Sillman: I object to that.

The Court: Overruled. She may answer, if she knows.

A. Well, there are some things you just happen to remember and some you don't. That's just one of the things I don't remember.

Q. How do you remember what you made?

A. Well, I can't really account for it, but I think those years—that was a very fine salary even for a man, no less a woman.

[fol. 629] Q. Was Mr. Friedberg making more or less than you?

A. I can't recall that.

Q. You have testified that he gave you all of his pay envelopes?

A. That's right.

Q. And, you can't remember those?

A. No; that's a long time, Mr. Windom.

Q. But, you can remember your own?

A. Yes, I do.

Q. Is there any reason why you can remember?

A. No.

Q. Just a quirk of memory, then?

A. That's right.

Q. How long did you live in New York after you were married?

A. After I was married?

Q. That's right.

A. Oh, around—I don't recall the exact time, between a year or two.

Q. And, did Mr. Friedberg have more than one job in that time?

A. I don't remember that, either.

Q. Do you remember anything about Mr. Friedberg's work in New York?

A. No.

Q. What hours did he work?

A. I don't know that, either. He worked the hours that other people have worked at the time. I couldn't say that.

[fol. 630] Q. But you can remember that he gave you every pay envelope?

A. Yes, I do.

Q. What makes you remember that?

A. Just coincidence, as you might say. I don't know. Just that he did.

Q. Do you remember any salary that he made in New York City?

A. No, I don't.

Q. Not anyone at all?

A. No.

Q. Now, you said when you were married you were making \$25.00 a week?

A. That's right.

Q. What was the highest salary you ever made in New York City when you were married?

A. Beg pardon?

Q. What was the highest salary you made during your married life in New York City?

A. Well, I left at that point.

Q. Did Mr. Friedberg ever make any more than you did?

A. I don't remember.

Q. Did he ever make less than you did?

A. I don't recall.

Q. Why did you move to Dayton, Mrs. Friedberg?

A. Well, I was tired of New York and we wanted to get out of there and better ourselves, so we headed west.

[fol. 631] Q. How much money had you saved during the time you were in New York?

A. You mean before I came away?

Q. Before you came to Dayton?

A. Oh, I think I might have had in the neighborhood of about \$3000.

Q. Where did you get that money?

A. I saved it.

Q. From what?

A. From our earnings.

Q. How much did you save from your earnings?

A. I don't remember exactly.

Q. Did you save any more than half of your earnings?

A. I can't recall.

Q. How do you remember \$3000, then?

A. There are some things that do sort of stay with you, Mr. Windom, and that's one of those things.

Q. What was your address in New York?

A. I don't remember that.

Q. What was the name of the Mayor of New York at that time?

A. Who?

Q. The Mayor of New York?

A. I don't know. I wasn't interested in politics at the time.

Q. Are there any other facts concerning your stay in New York that you do remember?

A. Not particularly, no.

[fol. 632] Q. But you remember \$3,000?

A. Yes, approximately that.

Q. Was that in silver or currency?

A. Just what do you mean by that question?

Q. Was the \$3000 in silver coins or in currency?

A. You mean when I left did I have it in silver or currency?

Q. That's right.

A. Well, I most certainly wouldn't carry \$3000 in silver.

Q. What was it in?

A. Currency.

Q. What were the denominations of the bills?

A. I don't recall that.

Q. Were they large or small?

A. They were large.

Q. What do you mean by large?

A. Well, at that time, if I recall, we used to have it large. You mean the size of the bills?

Q. I meant what denomination.

A. I don't know. I don't recall.

Q. Would you say that the majority of it was in one dollar bills or in one hundred dollar bills?

A. I don't recall.

Q. Now, in Dayton where did Mr. Friedberg work? His first job.

A. When we first came he had a little business of his own.

Q. And, how long did that last?

[fol. 633] A. I can't say exactly. I don't know.

Q. Where was that?

A. Now, just where do you mean? The location of it?

Q. That's right.

A. In some building. I don't remember the name of the building now.

Q. What part of Dayton was it in?

A. I believe on Main Street, if I am not mistaken.

Q. What do you consider the main street of Dayton?

A. I think Main Street is the main street. I don't remember too much about Dayton, either, but I believe that was right.

Q. When did you move to Dayton?

A. I think around 1917, something like that.

Q. How long were you in Dayton?

A. Around five and a half years.

Q. What was the next occupation that Mr. Friedberg had in Dayton?

A. I don't recall just what the next one was, but I know he was with the Naval Ordnance Plant there.

Q. How long was he there?

A. I don't remember exactly.

Q. A month or a year?

A. Oh, it was longer than a month, and I don't know how much longer, or anything of the sort, but I know he was there sometime.

Q. What other jobs did he have there?

A. He was with the American Mill Tailors there.

[fol. 634] Q. How's that?

A. American Mill Tailors.

Q. And what others?

A. I don't remember if he had any others. I can't remember. I can't recall any others.

Q. What were you doing in Dayton, Mrs. Friedberg?

A. Working.

Q. Where?

A. Pardon?

Q. Where were you working?

A. I had several positions.

Q. What was the first one?

A. Well, I don't know the order in which they came, but I was with the National Cash Register and I was with the Recording and Computing and then I was with a few industrial concerns.

Q. What did you make while you were working in Dayton?

A. I drew numerous amounts there each week, depending on where I was, what I had to do.

Q. Just give me some of them.

A. I don't recall exactly.

Q. Don't you recall any that you made?

A. Oh, in some places I made \$25, some \$30, some \$35.

Q. Now, where did you make \$35?

A. I don't recall.

Q. How do you remember you made it?

[fol. 635] A. I know I made it because I was there.

Q. Did you ever make any more than \$35?

A. Well, I don't remember.

Q. What did Mr. Friedberg make during the time you were in Dayton?

A. He made different salaries.

Q. What were some of them?

A. I don't know what he made at the Naval Ordnance, but I know when he was with the American Mill Tailors he made very good salaries there. He even drew, some weeks, as high as, with his commissions, \$125, and of course, he made less, too, naturally, but that was about the highest he drew.

Q. How many times did he draw that high salary?

A. I don't know.

Q. How much money did you have when you were married, Mrs. Friedberg?

A. When I was married?

Q. Yes.

A. I don't quite recall.

Q. Did you have any when you were married?

A. Yes.

Q. How much?

A. I don't quite recall.

Q. Approximately how much did you have?

A. That's hard to say. I don't recall.

[fol. 636] Q. Why can you remember you left New York but you can't remember on that important day when you were

A. Well, maybe the time of leaving New York is important to me, too. That just happened. It is just coincidence.

Q. What made that day important?

A. The fact, probably, that we were

Q. Did you have \$500 or \$1000, or more when you were married?

A. I don't know exactly.

Q. How's that?

A. I wouldn't know exactly, so it was hard for me to say any amount.

Q. What is your best estimate?

A. I am sorry, I couldn't say.

Q. When did you save most of the \$3000, before you were married or after?

A. When did we save it?

Q. Yes.

A. I don't know what part I had to do with it, so I don't know what part I saved.

Q. You have no idea whether you saved most of it before you were married?

A. No, I can't say definitely what I

Q. I am not asking you for definite answers. [fol. 637] you for an approximation.

A. I don't remember.

Q. What's the highest salary you made

Mr. Sillman: She has answered the question. Object.

The Court: The witness has answered the question.

A. I told you, Mr. Windom.

Q. \$35?

A. That's right.

Q. You never made higher than that?

A. I don't remember.

Q. Now, isn't it a fact that at the American Mill Tailoring Co. Mr. Friedberg usually made less than

A. In the American Mill Tailoring Co.

Q. Yes.

A. No, I didn't say any—I didn't say that.

Q. What is the fact, then?

A. I told you I didn't know the exact amounts, but he made anywhere, I said, up to that amount, \$125, at times. I don't say he made that all the time, but I says he made anywhere up to that amount, so I didn't say that he made \$50.

Q. It was usually not anywhere near that high?

A. No, I said——

Q. You have already said that on direct examination?

A. That's right.

Q. What was the purpose of your moving to Columbus?
[fol. 638] A. Mr. Friedberg moved the business.

Q. How much money did you save during the time you were at Dayton?

A. Well, you mean by the time we came here to Columbus, is that it?

Q. During the years you were at Dayton, how much money did you save?

A. Oh, we had approximately about \$25,000 or \$26,000, something like that.

Q. Is that the total when you left Dayton?

A. Yes, around that figure.

Q. In other words, I would subtract \$3000 from that figure to get your savings at Dayton?

A. That's right.

Q. That would be, then, that you have saved \$22,000 to \$23,000 during the time you were at Dayton?

A. If that's what it is, it is.

Q. In five and a half years, Mrs. Friedberg, is that correct?

A. Five and a half years, approximately. I can't say for sure.

Q. And, this \$3000 you say you had when you came to Dayton, what did you do with it?

A. I put it in the bank; that is, I had it.

Q. What bank did you put it in?

A. Well, as well as I can remember, we dealt with the Dayton Savings and Trust Company.

[fol. 639] Q. Which one?

A. Dayton Savings and Trust.

Q. Did you put all of your money in the Dayton Savings and Trust Company?

A. I don't remember that.

Q. Did you put your \$3000 in the Dayton Savings and Trust Company?

A. I don't remember that. If that's where I banked, I must have.

Q. Where did you keep the money that you saved during the time that you were in Dayton?

A. I don't recall exactly.

Q. Did you put that in the bank?

A. I don't know exactly where I had it.

Q. You don't know where you had any of it, Mrs. Friedberg?

A. Well, if we banked it—I had a vault, a box and a vault also, and I always had some money in the vault.

Q. What bank was this vault in?

A. In the same bank.

Q. And, what did you keep in that vault?

A. What did I keep in it?

Q. Yes.

A. I don't know what else I had besides, but I had my cash in there.

Q. Was that cash in currency or silver?

A. Currency. Who would keep silver?

[fol. 640] Q. When I say silver, I also mean gold.

A. No, I never had any gold.

Q. What denominations were those bills in?

A. I don't know.

Q. You have no recollection at all?

A. No.

Q. Was that in these envelopes you referred to?

A. Well, I don't remember what method I used in keeping the money there.

Q. Did you ever invest any of this money?

A. Yes.

Q. I am speaking now of New York and Dayton.

A. No, not in New York. I thought you meant Dayton.

Q. Did you ever invest any in Dayton?

A. Yes.

Q. In what?

A. Bonds.

Q. What bonds?

A. War Bonds.

Q. How many War Bonds did you have in Dayton?

A. Oh, I think we had approximately \$8000 worth.

Q. How much?

A. About \$8000.

Q. That would be World War I that you are talking about?

A. That's right.

[fol. 641] Q. In whose name were those bonds?

A. I don't recall.

Q. In whose name were the bonds in the Market Exchange Bank?

A. Various names. Mr. Friedberg's and mine.

Q. But you don't know whose name the others were in?

A. No.

Q. Whose name was this Dayton account in?

A. I don't remember that, either, whether it was just mine or joint, or what it was.

Q. Was it in the name of Friedberg or Handler?

A. I can't remember that.

Q. Now, as to the bulk of the money that you saved in Dayton, what is your best recollection as to whether that was placed on deposit in a bank or not?

A. I don't remember any part of it.

Q. This Dayton bank you are referring to is still in existence?

A. I don't know.

Q. Was it in existence when you left there?

A. I don't remember that either.

Q. Did you ever draw your money out?

A. I did when I left there.

Q. Was the bank in existence then?

A. Naturally, it had to be.

Q. Now, you say Mr. Friedberg turned all of his money over to you in both New York and Dayton?

[fol. 642] A. That's right.

Q. What was the approximate total amount that he turned over to you?

A. I don't know.

Q. How much rent were you paying in New York?

A. I don't remember that, either.

Q. Do you remember what it cost you to live in New York?

A. No.

Q. How much rent were you paying in Dayton?

A. I don't remember that, either.

Q. Whatever amount Mr. Meyer Cohen gives, will that be the correct amount?

A. Mr. Meyer Cohen had no jurisdiction over my finances or living, so it isn't the correct amount.

Q. You lived with Meyer Cohen in Dayton, did you not?

A. Yes, I did, but he didn't manage my finances.

Q. Did you pay him rent?

A. We just had a room there.

Q. Did you pay him rent?

A. Yes, I paid his wife, not him.

Q. Then, would the amount as shown by any records which the Cohen's have be the correct amount?

A. I don't think it would be.

Q. Why don't you think it would be?

A. Because I didn't pay him, I paid his wife.

[fol. 643] Q. Would any record that Mrs. Cohen has be correct?

A. She never kept records.

Q. How do you know she never kept records?

A. Because she was a woman that didn't even write English.

Q. How do you know she didn't have a record?

A. She didn't write English, Mr. Windom.

Q. Is it necessary that she write her records? Isn't it possible somebody else wrote her records?

A. It is possible, but I knew she kept no records.

Q. It is purely a deduction on your part.

A. Well, if you wish to make it that.

The Court: At this time, ladies and gentlemen of the

jury, the Court intends to recess until two o'clock this afternoon. During the intermission you must follow the instructions heretofore given you, in every respect.

(Thereupon a recess was taken until two o'clock January 2, 1952.)

WEDNESDAY AFTERNOON SESSION

January 2, 1952

FRANCES FRIEDBERG, resuming the stand, was examined and testified further as follows:

Cross examination (Cont'd.).

[fol. 644]

By Col. Windom.

Q. Mrs. Friedberg, you said you purchased a new car in Dayton. Did you pay cash for that?

A. Yes.

Q. No mortgage on it?

A. No.

Q. You are quite sure that there was no mortgage on it?

A. Positive.

Q. These \$8000 in World War I Bonds that you say you purchased. Approximately when did you purchase those?

A. Well, I don't remember the exact date, but it was through the war period.

Q. It was during the war, is that right?

A. I think so.

Q. World War I lasted, substantially, eighteen months, so it would have been during that eighteen months period?

A. As I said, I wouldn't know exactly.

Q. Is my deduction that it would have been during the eighteen months of the war correct?

A. Well, I still wouldn't remember exactly.

Q. Where did you get the money to purchase the bonds?

A. Where did we get the money?

Q. That's right.

A. First of all, when we worked—we bought them when they deducted each week a certain amount of our salary to

[fol. 645] pay for a bond. We bought a bond each time. Then we had some money.

Q. All right, will you just explain to me in detail how you paid for them?

A. Well, I don't recall exactly how I paid for them.

Q. If you had \$3000 when you came, by your answer to my previous question, that was in 1917, the war was '17 and '18. That means \$5000 came from some place. Where did it come from?

A. I don't remember exactly that we confined ourselves to any period of time that we purchased the war bonds, but they were bonds at the time that were called war bonds.

Q. That would be a \$5000 discrepancy between what you had and what you spent within a very few months after you moved to Dayton.

A. I didn't say I purchased \$8000 exactly in a certain length of time, Mr. Windom.

Q. When did you buy them?

A. As I say, I don't remember exactly. It was over a period of time, but I can't remember exactly.

Q. Let's see how near we can get to it.

A. Well, I am sorry, but I couldn't commit myself too near because I don't remember.

Q. Now, Mrs. Friedberg, you have committed yourself quite in detail on Mr. Sillman's questions. Was it before or after April 1920 that you bought these bonds?

A. I don't remember. I may have bought some before and may have bought some after. I don't remember exactly [fol. 646] how many I bought and when.

Q. Do you remember exactly how many you bought?

A. I said approximately \$8000.

Q. How close an approximation is that?

A. Well, I don't know. If I had known exactly I could have told you exactly, but when I say approximately, it is in that figure, around close to that figure, as nearly as I could remember.

Q. The fact is, you don't remember anything about it, do you, Mrs. Friedberg?

A. What do you mean, I don't remember anything about it?

Q. You don't remember \$8000, do you?

A. Yes, I do.

Q. But, you don't remember when you bought them?

A. No, I don't.

Q. Whom did you buy them from?

A. Well, I don't recall that, as a matter of fact, either. I know I got some at the different plants that we worked at.

Q. And, what plants would those be that you got them through?

A. I got some at the National Cash Register, some at the other, Recording and Computing. I don't remember if I bought some through the bank, so, you see, I can't say definitely.

Q. What's your best estimate as to your total income after you moved to Dayton in the year 1917; I mean by month? What was your average income—or by week, whichever you prefer?

A. I can't recall that too definitely, either.

[fol. 647] Q. Do you have any idea what it was at any time during 1917 to 1920?

A. Well, it varied.

Q. Give me any estimate of what it was?

A. I don't know exactly what Mr. Friedberg's salary was at the time because he had various.

Q. What's your best judgment of what his salary was?

A. I don't know just exactly what he made at any particular time. I knew at the time.

Q. Mrs. Friedberg, I am not asking you for it exactly. I am asking you for your best estimation of it.

Q. Well, there isn't any use of my giving an estimate if I couldn't tell you a truthful one, you see, so I am just telling you I don't remember.

Q. You just don't have any idea, is that the answer?

A. I know through the period of the years approximately how much money he has made and so forth, through the years, but I can't say exactly at any period just when and how much he made.

Q. Was Mr. Friedberg making more than you were, or less, in 1917?

A. More.

Q. Was he making more than you in 1918?

A. Yes.

Q. Mrs. Friedberg, living costs were pretty high in those days, weren't they?

A. Living costs? I don't know.

[fol. 648] Q. You can't remember the cost of living in World War I?

A. No.

Q. You don't remember that?

A. You know that's a long time, Mr. Windom, to remember things exactly.

Q. How do you remember the \$8000, then?

A. Well, that's something that was there.

Q. Living costs were there, Mrs. Friedberg.

A. Living costs varied, you see, from week to week.

Q. Mrs. Friedberg, as a matter of fact, you sold yard goods from house to house during the time you were in Dayton, didn't you?

A. No, I didn't.

Q. You and Mr. Friedberg did, didn't you?

A. Yard goods?

Q. Yard goods, cloth?

A. You mean when we first came to Dayton?

Q. That's correct.

A. The Consumer Merchandise Company, is that it?

Q. Mr. Friedberg drove the car and you went in the house and made the sales, didn't you? Isn't that true?

A. Yard goods, it was?

Q. Call it cloth, then, Mrs. Friedberg, if you will. You did sell cloth from house to house, didn't you?

A. He did?

Q. Mr. Friedberg drove the car, you went in and made [fol. 649] the sales, is that right?

A. I don't recall that.

Q. You don't recall that?

A. No.

Q. Shall I say, then, that you made these sales at certain houses, Mrs. Friedberg? Would that refresh your recollection?

A. That wouldn't change the sentence. It just changes it around in words, but it doesn't mean any more to me.

Q. Did you or did you not make such sales?

A. I went to work when I was in Dayton.

Q. I am asking you about a part of your occupation in Dayton. I am asking you if you did not——

A. I don't remember.

Q. ——sell cloth from house to house?

A. I don't remember selling cloth from house to house.

Q. You don't have any recollection of that, none at all?

A. No.

Q. These bonds you purchased during World War I; who purchased them?

A. I think we both did.

Q. Where did Mr. Friedberg get the money to purchase them?

A. He worked and it was taken out of his salary.

Q. Did he take it out of his salary before he gave it to you, or afterward?

A. The concern did that, you see what I mean? You [fol. 650] pledged yourself and they took out a certain amount out of your weekly envelope before you even received it.

Q. Well, Mrs. Friedberg, \$8000 in bonds is a lot of bonds. Did he work at any one place long enough to pay out a substantial amount?

A. I didn't say that.

Q. What did you say?

A. I didn't say we bought it, particularly, at one place.

Q. Well, explain to me how they were purchased, then?

A. Some were bought at the plants we worked at, and some probably may have been bought at the bank. I don't recall exactly now.

Q. Where did Mr. Friedberg get the cash to buy those he bought at the bank?

A. From me.

Q. And, is that the money he earned in the first place?

A. Why, yes.

Q. How long did you have this car, the one that you purchased in Dayton, before you traded it on the duplex?

A. I don't know.

Q. Was it a month, a year or several years?

A. Not several years. It wasn't a very old car when we traded it in. No, we hadn't had it very long.

Q. You say it was or was not?

A. It was not an old car.

Q. Why did you trade it in on the duplex?

A. Because—Mr. Friedberg bought that property and we [fol. 651] didn't feel we wanted the car.

Q. Mrs. Friedberg, with all your cash assets, was it necessary to trade that car in to get the duplex?

A. Well, that's just a matter of opinion, Mr. Windom. A lot of people spend their money in other ways, too, that we don't care to. Other people like certain pleasures which we don't care for, and that's the reason we haven't indulged in them. So, that's just a matter of opinion.

Q. Is that the only answer you can give to that, Mrs. Friedberg?

A. I don't know what you mean, is that the only answer. We feel we didn't want—

Q. Do I understand that you traded in your means of transportation on a duplex when you had cash in your envelopes?

A. We didn't need that car. It wasn't an essential thing.

Q. Why did you buy one in Columbus when you didn't need it?

A. We didn't have a car after that for a long time.

Q. But, you bought one after you came to Columbus, didn't you?

A. No.

Q. You didn't buy a car after you came to Columbus?

A. No.

Q. How much money did you have in cash at the time you moved to Columbus?

A. When we moved to Columbus from Dayton, you mean?

Q. Yes.

A. Oh, I said approximately \$26,000.

Q. You told Mr. Sillman you had \$15,000. Which is right?

[fol. 652] A. In cash.

Q. In cash? I read you my notes. "Had \$15,000 in cash when moved to Columbus." Which is right? What you told Mr. Sillman or what you are telling me?

A. Plus the \$8,000 in bonds.

Q. I am talking about cash.

A. Well, now——

Q. \$15,000 and \$8,000 doesn't add up to \$26,000, Mrs. Friedberg.

A. We had the car.

Q. You had traded that on a duplex.

A. We hadn't traded it when we came to Columbus. I understood your question meaning what did we have, what were our assets when we came into Columbus.

Q. What was your cash when you came to Columbus, the same as Mr. Sillman asked you, approximately \$15,000?

A. That's beside the other assets.

Q. Now, let me ask again, how much cash did you have when you came to Columbus?

A. I just told you.

Q. \$15,000?

A. Approximately that.

Q. What did you mean by the figure \$26,000?

A. That included the rest of the assets that we had.

Q. What assets?

A. The bonds.

[fol. 653] Q. How long did you keep those bonds?

A. And the car, and then, we had some stock, not too much.

Q. How long did you keep your bonds?

A. When we came here—oh, very shortly after, I don't know exactly how soon after, he traded—he bought this duplex and traded some of the bonds in on that.

Q. In other words, the bonds were all cashed at Columbus?

A. Pardon?

Q. The bonds were all cashed at Columbus, then?

A. Evidently, they must have been, yes. We brought them over here.

Q. Where did you cash them?

A. I don't recall that. Some of them were traded in, I said, on this duplex.

Q. You told Mr. Sillman that you personally brought the family savings from Dayton to Columbus. How did you bring it?

A. In a suit case.

Q. In what form?

A. In currency.

Q. In what denominations was that currency?

A. I couldn't recall that.

Q. What year was it that you moved to Columbus?

A. I don't know if it was '22 or '23. I am not quite sure.

Q. You haven't worked since you have lived in Columbus except at the Tailoring establishment, have you?

[fol. 654] A. That's right.

Q. Ever since you lived in Columbus Mr. Friedberg has been engaged either with the corporation or in business for himself?

A. That's right.

Q. You said Mr. Weiss lived with you. How much did he pay?

A. \$45.

Q. What was your rental?

A. \$55.

Q. How did you justify such a high charge to Mr. Weiss?

A. I gave him a home. I did everything for him, including his laundry work.

Q. And, you felt that that justified a charge of \$45 a month opposed to rental of \$55?

A. Wouldn't you think so? I didn't confine him to a room. I gave him a home.

Q. Did you consider the home important?

A. Well, I don't understand what you mean, did I consider the home important.

Q. Now, if you brought \$15,000 in cash from Dayton to Columbus, what did you do with it, Mrs. Friedberg?

A. I put it in the vault, box.

Q. What do you mean by box?

A. I put it in the safe deposit box.

Q. Did you ever put any of that in actual savings deposits in the bank?

[fol. 655] A. Well, I don't recall if I did it immediately or not. I just don't recall.

Q. We are getting pretty close up to the present time. Did you or didn't you, Mrs. Friedberg?

A. I say, I don't recall exactly.

Q. What is your best recollection? If my notes make

sense to me, and I believe they do, you told Mr. Sillman you kept it in a safety deposit box, is that correct?

A. Yes.

Q. What was so unusual about that cedar chest you kept your savings in?

A. Nothing, except that it had a good, substantial lock, and it was convenient, and I kept things home there, in the cedar chest.

Q. What period of time did you have that cedar chest?

A. I still have it.

Q. When did you first acquire it?

A. I bought it as soon as I came into Columbus.

Q. What did Mr. Friedberg make when he was in the corporation?

A. He made various salaries.

Q. What is your best recollection?

A. I know he drew \$50, \$60, and \$75, \$85, \$100.

Q. As a matter of fact, Mrs. Friedberg, the standard salary was \$50 a week, was it not?

A. No, I don't think so.

Q. You don't think the standard was \$50 a week?

[fol. 656] A. No, because I have gotten envelopes that contain, as I told you, \$60, \$75, \$85 and \$100.

Q. Let me repeat the question. I say, the standard salary was \$50 a week, was it not, and then occasionally when business was good they drew more?

A. Oh, I see what you mean. Oh, they kept on increasing themselves, yes.

Q. It kept on increasing, is that what you said?

A. They increased their salaries. Naturally, when you go from \$50 to \$60, that's an increase.

Q. What caused the corporation to go out of business?

A. I don't know a thing about that corporation. I never set foot into it.

Q. Whose name was the car you purchased in Dayton in?

A. I think it was mine.

Q. Then you traded that in on this duplex after you came to Columbus?

A. Yes.

Q. Where was that duplex located?

A. On Bedford Place.

Q. That's in the east end of Columbus?

A. That's right.

Q. What did you pay for that house?

A. Oh, I think around \$20,000, in that neighborhood.

Q. How much?

[fol. 657] A. I think around \$20,000.

Q. Around \$20,000?

A. Yes.

Q. \$20,000?

A. Yes.

Q. What was the number on Bedford Place?

A. I believe it was 705.

Q. That would be approximately Livingston Avenue, or very close to Livingston Avenue?

A. Yes.

Q. When did you buy this?

A. Soon after we arrived in Columbus.

Q. That would be back about 1922?

A. I think around maybe that.

Q. Were there any \$20,000 homes on Bedford Place at that time?

A. Yes. There is one on Kimball Place that's just in the same area. That's a single house.

Q. In 1922?

A. Yes. The rental there was very high, too.

Q. Are you familiar with what the F. & R. Lazarus home sold for?

A. No.

Q. Whose name did you take the real estate in, Mrs. Friedberg?

A. When it came to the real estate transactions, I don't know very much about it, as a matter of fact, hardly any. Mr. Friedberg handled that, so I think you would have to take that up with him.

[fol. 658] Q. Whose name did you take it in?

A. I don't recall it, as I say.

Q. You told Mr. Sillman that you never encouraged Mr. Friedberg to invest in securities, wanted everything in cash. Why did *you* buy the securities at Dayton, then?

A. Securities?

Q. You told me that you had some, at least a small amount of securities when you came to Columbus.

A. Mr. Friedberg bought those; very small amount.

Q. Where did he get the money to buy them?

A. Got it from me.

Q. Why did you give him the money, if you don't like securities?

A. After all, you know, you just can't deny a man everything. It wasn't a case of gambling or anything.

Q. Where did Mr. Friedberg get the money to buy the duplex, if he bought the duplex?

A. From me.

Q. If you didn't believe in real estate investments, why did you give that to him?

A. Well, as I said before, I still don't believe in real estate investments, as far as that goes, but after all, he didn't exactly take that money and throw it away, it was a good investment and it brought in a rental, so I didn't think he took such a chance on that.

Q. Where did Mr. Friedberg get the money for the investment in stocks and bonds through the Vercoe Company account?

[fol. 659] A. From me.

Q. And, if you don't believe in that, why did you let him have that money?

A. Well, Mr. Windom, as I said before, you just can't deny a man that earns the money every little thing. As I said before, it is not very speculative stocks that he bought and it is very little.

Q. Mrs. Friedberg, isn't it a fact that your family was just the same as any other family, and that was Mr. Friedberg's money just the same as it was yours?

A. No, definitely no. He might have earned it, but I was the one that did without and saved it. I managed the money and I went out and bought very frugally, and I did without a lot of things that I could have had. I don't say that I couldn't have had them, but I just didn't care about it and I wanted that security, and I saved everything I was possibly able to.

Q. That record of your savings that *you* kept on the sheet of paper, what happened to that paper?

A. Which particular one?

Q. The one you were telling .

A. I kept records all the time, .

Q. Just that one important record in the car with you the night you and Mr. Friedberg had the conversation of that?

A. I didn't take out any record. We ,
eralities, that's all.

Q. You said you had it in your purse.
[fol. 660] A. No, I said I always had a
had at the time in my purse.

Q. What became of any of those records?

A. Well, I used to keep rewriting them
list and just throw it away.

Q. Why?

A. Well, after all, I had no real purpose
the records, you know. As I rewrote it
rent one.

Q. Do you have a record today?

A. I don't have it with me, no.

Q. Where is it?

Mr. Sillman: Now, if the Court please
object to that.

The Court: Overruled.

Q. Where is the record?

A. Well, I just don't have it with me now.

Q. Where is it?

A. At home.

Q. Where at, at home?

Mr. Sillman: Again, I am going to object,
please.

The Court: Overruled.

Mr. Sillman: I don't think he has a record.

The Court: This is cross examination.

Q. Where is it at home?

[fol. 661] A. I have it at home in my drawer.

Q. What drawer?

A. Mr. Windom, I think my personal life
disclosed enough to the public.

Q. They are going to be a lot more before I am finished. In what drawer?

A. I am sorry, but that one question I will not answer.

Q. Thank you. When did Mr. Curtis, the first agent who made the investigation—what was the first you ever saw of him?

A. September, I believe it was, the 26th.

Q. Why didn't you ever show Mr. Curtis, Mr. Nerny or Mr. Clager that record that you referred to?

A. Why didn't I show it?

Q. Why didn't you?

A. I didn't know I was supposed to show him any records. Furthermore, they never asked for any records. I don't understand. They got the records they asked for and more.

Q. Mrs. Friedberg, you have always been well aware, have you not—

A. Of what?

Q. That the matter of cash was of paramount importance in this case, and to your husband? You have told Mr. Sillman that you kept a running record of cash saved ever since you were married.

A. I did.

Q. You are faced with a criminal prosecution. Why [fol. 662] didn't you show the agents what you had?

A. They didn't come in to ask me for my personal records.

Q. You talked to them, did you not?

A. No.

Q. You never talked to them?

A. They talked with Mr. Friedberg.

Q. They never talked to you?

A. Mr. Curtis asked me a few questions there when he came in; what I mean to say is this. He didn't ask me any questions. He just came in and went through my desk drawer and took every record he wanted.

Q. Did he take that record?

A. My personal record I kept in my handbag at that time.

Q. Mrs. Friedberg, with the matter of the amount of

cash or lack of cash being important, why didn't you show them the record?

A. They didn't come to investigate my cash. They came to investigate the books and that's what they got.

Q. Were all of your books in bound form or were some of them in loose form?

A. Yes, they got every record.

Q. I am disputing your definition of the term books, is all, Mrs. Friedberg. The fact is, you did not show them that record, did you?

A. No, not my record, not what I personally had, no. That had nothing to do with the business.

Q. Mr. Friedberg earned that money, didn't he?

A. He might have earned it but I saved it. It is one [fol. 663] thing to earn it and another thing to save it.

Q. Don't you think Mr. Friedberg could have saved that money?

A. No.

Q. Was he a spendthrift?

A. No. Mr. Friedberg is a different type of person. We are all built differently, you understand. Now, he isn't a money-minded person, and I have been always more or less mindful of that from my childhood on, and have determined to save everything I could.

Q. Was he less determined than you?

A. Well, as a matter of fact, he never interfered, so I don't know whether you call it less determined or more determined, but he never interfered with the handling of the money. I always took care of that.

Q. Sort of a joint enterprise, then?

A. No, not joint. It is just single enterprise and it is my money.

Q. Why didn't you return the income tax returns?

A. I? I didn't earn any money.

Q. Why didn't you return the personal property tax returns if it was your money?

A. Mr. Friedberg had the accountant take care of that every year.

Q. The accountant will know about that, then?

A. Yes, every year.

Q. I believe you said you bought the Pontiac in 1936?

A. Yes.

Q. Did you pay cash for it?

A. Yes.

[fol. 664] Q. Why did you give a mortgage on it?

A. A mortgage on the car?

Q. A mortgage on that Pontiac if you had all that cash?

A. A mortgage? I don't remember a mortgage being on the Pontiac.

Q. You don't remember a mortgage?

A. No.

Q. The car was taken in your name, Mrs. Friedberg. Do you remember that?

A. And there was a mortgage on the Pontiac?

Q. You acquired it from Mellman Pontiac Company, that's correct, isn't it?

A. Who?

Q. Mellman, I should say, and you gave a mortgage to George Zimmerman for \$600, didn't you, while you had over \$26,000 in cash, is that right?

A. That part of it you will have to ask Mr. Friedberg. I don't remember the handling of any—

Q. The car was in your name.

A. That doesn't make any difference.

Q. You had to sign the mortgage.

A. I put my signature to a lot of things, Mr. Windom, even in real estate transactions. That didn't say that I exactly knew what I was putting my signature to when it came to that transaction.

Q. You mean Mr. Friedberg actually does run the family?
[fol. 665] A. As far as the real estate and so on.

Q. So far as the finances go?

A. No.

Q. What about the automobiles?

A. That's not real estate. The automobile we paid for, I paid for in cash.

Q. And put a mortgage on it for \$600?

A. I just don't remember that at all.

Q. In fact, the mortgage remained on there until October 25, 1939, didn't it?

A. Some other connection with that that I don't know. There must have been some connection with that.

Q. Now, you said that when you came to Columbus your cash was approximately \$15,000, the cash plus your securities or other property was substantially \$26,000. Now, you said in 1936 you had far in excess of \$50,000. Where did you get it?

A. I saved it.

Q. How's that?

A. I saved it from the income.

Q. Well, let's figure it out. How much did Mr. Friedberg make?

A. I can't remember from year to year. At the time I did remember, but he made various salaries.

Q. Take the highest one you can remember.

A. You mean from '22 to '36, is that it?

Q. That's right.

[fol. 666] A. Well, I think he averaged at that time, as well as I could recall, around \$3900 to \$4000 a year.

Q. How much did it cost you to live?

A. Well, that all depended on the cost of living.

Q. You have given me an average on the salary. Let's just take an average on the living, Mrs. Friedberg. How much did it cost?

A. You see, I practically had no rent to pay, and my living was very little.

Q. Well, you had four people, five with Mr. Weiss. Let's just ignore the rent from our calculations for a moment, if you desire. What would you say your table cost you?

A. Living was very cheap at that time, because I know you could go out—used to go out on Saturday evening to market and you could buy a week's supply of vegetables and food for about five dollars, so you see, living wasn't very high then. It would rather vary from time to time, from one year to another.

Q. You mean to tell me, the cost of food was not high from 1926 to 1929, Mrs. Friedberg?

A. '26 to '26?

Q. '22 to '29?

A. Of course, I don't know what you mean by high. You can go out and pay high prices at any time you want to, but you can know how to buy frugally, too.

Q. As a matter of fact, you know that some items were

practically the same right then during those so-called days of prosperity as they are right now, don't you?

[fol. 667] A. No, they weren't. They were far lower than they are now, far lower.

Q. Well, what is your best estimate of what it cost you to live per year?

A. Well, I don't know exactly, but I would say a high estimate, including everything, \$1500 a year would be a lot of money for me at that time.

Q. \$1500 a year would be a lot of money?

A. Yes, because, you see, we didn't indulge in any so-called pleasures and we didn't—Mr. Friedberg doesn't smoke, nor do I, we don't play cards and we haven't gone to parties or had parties, and you know, you can save a lot of money over a period of years if you don't indulge in those things.

Q. That's pretty obvious, if it is true.

A. Yes, it is obvious. You try it and you will find out.

Q. How much in excess of \$50,000 did you have?

A. I don't recall.

Q. You said it was far in excess. Would it be ten, twenty, thirty thousand dollars?

A. I couldn't commit myself. I knew at the time but I don't know now exactly.

Q. Well, at one time you mentioned to Mr. Sillman, referring to right about this time, \$75,000. Were you referring to this time or not?

A. I don't think I ever said that.

[fol. 668] Q. You don't have any idea how much in excess it was?

A. I don't think I ever said that, Mr. Windom.

Q. We have used these words rather loosely, then, large and far, and so on?

A. But I didn't say \$75,000.

Q. We talk about large loans. I would like to have you fix that just as definitely as you can, Mrs. Friedberg.

A. I can't, Mr. Windom, right now, because, you see, it's been so long and I just can't remember.

Q. Well, that \$50,000, what was it in? Let's just say it was \$50,000. What was it in?

A. You mean in '36?

Q. In '36. What was the form of it?

A. Well, I think I had it in cash. I can't remember that exactly, either.

Q. Did you have it in any bank savings deposits?

A. I had most of it in cash in the vault.

Q. You had all of it in cash, didn't you, Mrs. Friedberg?

A. I am trying to think whether I had any in the bank at all at that time.

Q. And, was that the same cash that you had brought from Dayton plus your additional savings?

A. Well, I don't know. That would be hard to answer, too, because, you see——

Q. You hadn't been spending anything, had you?

[fol. 669] A. Well, the point is this. Mr. Friedberg has bought this real estate.

Q. What real estate?

A. You just mentioned a duplex a while ago, didn't you, and then he kept on from time to time, he kept on trading on houses, you see. I believe you have records of it.

Q. Well, of this money, referring now to 1936, of this \$50,000, how much of that was in real estate?

A. I don't remember now.

Q. Was some of it in real estate?

A. Of the \$50,000?

Q. Yes.

A. No, that was actual cash.

Q. That was cash. And, the real estate holdings would be in addition to that?

A. I don't know.

Q. Did you have a duplex at that time?

A. I don't know, I can't recall, I think we didn't have the duplex any more.

Q. And, how much did you get when you sold the duplex?

A. I wouldn't remember that.

Q. You remember how much you paid for it but not what you got for it?

A. You see, the real estate transactions I wouldn't know anything about, because I didn't have a hand in it at all.

[fol. 670] Q. How do you remember how much you paid for it?

A. It happened to be the first transaction and it sort of registered.

Q. Mrs. Friedberg, remember, that was your money, it went back to you, didn't it?

A. He traded that.

Q. What did he trade it for?

A. As I say, I don't recall the rotation there.

Q. You signed the deeds, of course?

A. I signed a lot of papers there, Mr. Windom, but I just don't remember exactly. I knew if he asked me to put my signature on something that I wasn't worried it was anything that would be wrong.

Q. Now, as the years roll along you said you started thinking about what was going on, in 1942, and I assume you were referring to the war, which then had been going on for some seven years throughout other portions of the world and just was starting for us, and that you started to buy bonds. You told Mr. Sillman you purchased the bonds from cash in the box. What box?

A. The lock box.

Q. The safety deposit box?

A. Yes.

Q. And, where did that cash come from?

A. My savings.

Q. I mean, that specific cash that you used, where did it come from?

A. For the bonds, you mean? From my savings.

[fol. 671] Q. Is that the same money you have been saving from New York to Dayton to Columbus?

A. Yes.

Q. Now, other than the duplex, what have you ever done with any of that cash, up until this time?

A. Now, the real estate transactions have nothing to do with that, if that's what you are referring to.

Q. I am just asking you, what have you ever done with any of it?

A. With the cash?

Q. With the cash.

A. Nothing.

Q. You told me, if I understand correctly, that you used a part of it to buy the Bedford Place duplex?

A. Yes.

Q. Now, that's one thing. What did you ever use any of the rest of it for?

A. I don't recall of having bought anything else, as far as I am concerned.

Q. Did you ever put any of that money in bank deposits?

A. What you are referring to now—I know I had an account in one of the banks. You are referring from what year?

Q. I am referring at the time you started to buy bonds. You told Mr. Sillman you took it out of the box. I am trying to find where that money came from.

A. Now, is that—

[fol. 672] Q. Now, you have purchased a duplex. I am inquiring, did you purchase anything else out of your cash savings?

A. From that time on—you see, this duplex was purchased around '22 or '23.

Q. I am talking back from the time you came to Columbus.

A. Oh, back there. I don't remember having purchased anything else in the 20's or so.

Q. Did you deal in securities?

A. No.

Q. Did you purchase any other bonds before the war bonds?

A. No, I don't think I did, no.

Q. Did you loan anyone any money?

A. Loan anyone any money?

Q. That's right, other than the loans that you have referred to, in the business?

A. Not that I remember.

Q. What is your best judgment as to the amount of cash on hand in 1930?

A. 1930?

Q. 1930.

A. I couldn't say, Mr. Windom, I am sorry.

Q. Well, if you had \$15,000 in 1922 when you came to Columbus, how much had it increased by 1930?

A. I couldn't say now. I knew at the time. I always

knew at the time, but now I don't recall at any particular time what I had.

[fol. 673] Q. Now, Mrs. Friedberg, at the time you bought that duplex there was a mortgage on it, wasn't there?

A. I don't—

Q. And you assumed the mortgage?

A. As I say, Mr. Windom, I am sorry, I can't enlighten you too much on the real estate transactions because I didn't know too much about them.

Q. If the court house records show there was a mortgage, that is correct?

A. There must have been.

Q. You traded in on that duplex the automobile from Dayton, you assumed an additional mortgage on it. How much cash did you put into it, do you remember?

A. I don't recall. I said Mr. Friedberg—

Q. That would indicate it was rather small.

A. I said I didn't know.

Q. At the time you bought these war bonds, Mrs. Friedberg, will you explain to me why there were no—none of the old-fashioned large bills used in that purchase?

A. Well, when we bought the war bonds—

Q. I am referring to the currency in use in the United States up to 1929. If you saved all of this money and you had it in a cedar chest and a lock box, as you have said, and you didn't put it in bank accounts, as you have said, why didn't those old large bills show up in the purchase of bonds?

A. Because we exchanged that money when the new bills [fol. 674] came into effect.

Q. Where did you exchange it?

A. Different banks.

Q. Name them.

A. Various parts of the city.

Q. Start naming those banks, Mrs. Friedberg.

A. I haven't the particular recollection of all—I go into the Huntington, I bank at the Ohio National.

Q. Where did you exchange those bills?

A. I am sorry, I can't tell you definitely. I told you.

Q. You can't remember the thing upon which the success or failure of your defense might depend?

Mr. Sillman: I object to the form of that question.

The Court: Yes, sustained.

Mr. Sillman: That's going a little too far.

Q. Where did you exchange that money?

A. At various banks.

Q. Start naming the banks?

A. Not at one time, either.

Q. At any time. They have records of those exchanges. Please tell us.

A. Just as I said, I don't know any particular time or place.

Q. Will you name one of them, please?

A. Well, as I say, I don't know where we were banking at the time or any particular place.

[fol. 675] Q. Can you give me any date, even to a year, when you exchanged them?

A. No.

Q. Now, Mrs. Friedberg, why did you exchange them?

A. Because the old bills were called in and the new ones—

Q. You know that's wrong, do you not?

A. What?

Q. The old bills were never called in.

A. It was my understanding that's the reason they printed the new bills in order to get rid of the old ones.

Q. You know that they are just as good today as they ever were.

A. I haven't seen one since that time.

Q. Don't you know they are just as good today as they ever were?

A. No, I don't know, I am sorry.

Q. You can't tell us a single place or a single date when you transferred any of that money, can you?

A. I went to different banks in the city.

Q. You can't name any one?

A. Not one in particular, because, as I say, I went to various ones.

Q. Can you name all of them in particular?

A. I went to the Huntington, the Ohio National.

Q. What date did you go to the Huntington?

A. I don't know just what year. We exchanged them soon after the new bills came out.

Q. When was that?

[fol. 676] A. I believe it was around '29 or something like that, wasn't it, or somewhere around that time?

Q. How much did you exchange at the Huntington?

A. I don't know. We didn't exchange it all at one time. As I said, we took a little at a time.

Q. How little?

A. We would take about a thousand or something like that.

Q. Now, approximately when was this thousand exchanged?

A. I couldn't tell you.

Q. Would you say it was a thousand at the Huntington?

A. I don't know.

Q. Why did you go to the Huntington?

A. For no other reason than I would go to any other bank.

Q. Did you have an account there at the time?

A. No.

Q. Where did you have your account?

A. I would have to think back.

Q. Why didn't you go to the bank you had your account in?

A. For that matter, I go into any bank now, so I don't know why you would have to expect me to answer that.

Q. Where did Mr. Friedberg have his account?

A. Pardon?

Q. Where did Mr. Friedberg have his account at that time?

A. In '29? I don't know. I had nothing to do with his business then.

Q. Who took the money to the bank?

[fol. 677] A. Who took it?

Q. Yes.

A. You mean—

Q. When you exchanged it?

A. Well, he would go or—and I would go. We each exchanged some of it.

Q. How much did he exchange?

A. I don't know. I didn't keep track of what he did or what I did.

Q. You didn't keep track of what he did with your money, Mrs. Friedberg?

A. I didn't say that. I said I didn't keep track—you asked me how much he exchanged and I said I didn't keep track of that. That's what I mean. I didn't keep track of what he exchanged or what I exchanged. We merely took a package at a time, an envelope at a time and exchanged it, and then we replaced it that way into the vault.

(A brief recess was taken.)

By Col. Windom:

Q. Mrs. Friedberg, reverting for a moment to the purchase of that duplex, having refreshed my recollection about the thing, you actually paid \$3000 in cash, didn't you?

A. Mr. Windom, I said, I am sorry but I just don't know anything about the real estate transactions. You would have to get the full detailed explanation from Mr. Friedberg. So I really don't remember. I mean I don't know. I just don't know.

Q. And, isn't it a fact, that you had to sell your car to [fol. 678] raise the balance of that \$3000?

A. I didn't have to sell the car.

Q. You assumed two mortgages on the place.

A. Two mortgages?

Q. Two mortgages, one to Guaranty Title, \$8000, and another one to Mr. Newman.

A. I don't know anything about that, Mr. Windom, I am sorry.

Q. Well, who made the payments on the mortgages? You were living in it as a home.

A. No, we didn't live in it.

Q. You didn't live in the Bedford Place property?

A. No.

Q. You never lived at 701 Bedford?

A. The duplex was 705.

Q. What was the other number on the duplex?

A. 705½.

Q. Who made the payments on the mortgage on the 705?

A. Well, I can't remember who made the payments, but when it came to real estate transactions, Mr. Friedberg took care of it.

Q. Well, if you handled all the money you made the payments.

A. That doesn't say I made the payments. He probably—when he needed money he came to me, but I didn't make the payments.

Q. Well, I don't know who actually took them and handed them to somebody. Did Mr. Friedberg get the money for the payments from you?

[fol. 679] A. Well, if he needed money he wouldn't have had any other source to get it from, he naturally got it from me. That's the only explanation I can offer for that, but I don't recall any of the real estate transactions because I had nothing to do with them.

Q. Well, Mrs. Friedberg, why would you have purchased this property and assumed two mortgages on it if you had all the cash you say you have?

A. I still can't answer that, Mr. Windom, because I had nothing to do with real estate transactions. Mr. Friedberg will give you a detailed explanation of it when you get to him.

Q. And, when you sold it two years later you had only paid off \$1200, according to the records, on it?

A. I am sorry, I still can't answer.

Q. The \$1200 you would have furnished to Mr. Friedberg, according to your theory?

A. I don't know, because I don't know the transactions.

Q. Now, those memos that you kept in those days, referring to the time, let's say, from your arrival in Columbus. If you have destroyed those memorandums, exactly what fixes—

A. What?

Q. If you have destroyed those memoranda, as you say you have from time to time, what fixes your cash assets in your mind so vividly?

A. Well, you mean right now what fixes my cash assets?

Q. I am referring to these times when you have fixed it [fol. 680] quite definitely for us.

A. I don't know what times you refer to.

Q. Let's take the time you came to Columbus. You said you had \$15,000. What fixes that?

A. We moved then and I had to move it.

Q. What fixes 1936?

A. At that particular time I don't recall now what we had and I can't tell you. I didn't say I had a definite amount to tell you.

Q. You said it was far in excess of \$50,000.

A. But I still didn't say a definite amount.

Q. Did you ever show any of those running cash records to either Mr. Platt or Mr. Sillman?

A. No.

Mr. Sillman: You characterized those with a term—maybe not intencionally—you called them running cash entries.

Col. Windom: She says she made entry after entry, threw them away and made a new one.

Q. You said that the children's accounts were strictly their own money?

A. Yes.

Q. And that Wayne carried papers, worked in a drug store, and so on, if I remember correctly?

A. Yes.

Q. When did Wayne get his first job? How old was he?

A. Well, do you mean carry papers?
[fol. 681] Q. Yes.

A. I think he was about eight or nine years old.

Q. What paper did he carry at eight or nine years old?

A. Dispatch.

Q. He carried the Dispatch?

A. Yes.

Q. The record shows that you opened a Vercoe Company account to deal in stocks and bonds when Wayne was eight years old. Was he making that much money carrying the Dispatch?

A. Wayne didn't purchase these. Mr. Friedberg purchased those.

Q. Whose money was that, then?

A. Mine.

Q. So, Wayne Friedberg's account at Vercor and Company, opened when Wayne was eight years old, came from money earned by Mr. Friedberg, didn't it?

A. That account you would have to speak to Mr. Friedberg about. That, too, I never, as I said before, had anything to do with the real estate transactions or the Vercor Company account, so he will give you a detailed explanation of that.

Q. That money didn't belong to Wayne in the Vercor Company account, did it?

A. No.

Q. Even though it is in his name?

A. But, I said that Mr. Friedberg bought that in Wayne's name. He will give you the detailed explanation of just exactly why he set up that account that [fol. 682] way.

Q. How many times in your life since you have been married have you used the name Handler in connection with official transactions?

A. Practically all through my years of life.

Q. Well, Mrs. Friedberg, it so happens that that isn't true, because the records there show you have only used it twice in all of those official transactions.

A. Mr. Windom, I have been called that for years after I was married, for years, and I still use it.

Q. Why was it necessary for Mr. Friedberg to be known as Mr. Handler?

A. Well, when I would open an account, that is, a vault, in that name, I would go back and tell him. Wouldn't it be rather peculiar for him to go down there and say he is my husband and sign Friedberg. So he naturally had to sign Handler.

Q. Were you ever on the stage, Mrs. Friedberg?

A. No.

Q. Why did you use this name?

A. No particular reason except, as I said before, when I continued to work after I was married, for many years I was always called by that name. As a matter of fact, I still use it occasionally. I consider that as my name. It

is not a fictitious name, it is my given upon that name the same as I do Fried

Q. It is a rather unusual custom, thou

A. I don't know. A lot of people use t [fol. 683] maiden names.

Q. Your acquaintances, perhaps?

A. Well, not particularly acquainta many, many other people, too.

Q. You said you kept a memorandum money that you claim you advanced or lo to be paid back.

A. Yes.

Q. And, eventually you were paid bac

A. Yes;

Q. Do you have any of those memos y

A. You mean the money that I advance and so forth?

Q. That's right.

A. Well, each year as I got through threw them away, because when I gave Friedberg I didn't need them any more. his return.

Q. Why did you keep them on a paper keeping them in a book, like you kept records?

A. For no reason. It just never occu just put it down on a piece of paper and l

Q. You have referred to 1944, 1945, said Mr. Friedberg had no credit, if l correctly.

A. Yes.

Q. Why did he have no credit?

A. Well, you see, when the old busin [fol. 684] didn't have any credit at all, i

Q. Well, Mrs. Friedberg, with far in in cash in 1936, why didn't you open a s account?

A. Mr. Windom, that business had to o I wasn't giving my savings up. My sav to do with this entirely. As a matter of fa had no right to take the agents down to

that was my savings. It had nothing to do with the business.

Q. It was in his name, or I should say in Mr. Handler's name.

A. It was in mine. He had access to it.

Q. Did you protest, Mrs. Friedberg, the day all three of the gentlemen left the store and you were standing there? Did you protest?

A. I don't know where they went to.

Q. You told Mr. Sillman you overheard the conversation?

A. They spoke to Mr. Friedberg and Mr. Friedberg told me that they asked him if he had any bonds and he said, yes. "Where do you keep them?" "In the vault," he said. So Mr. Curtis told Mr. Friedberg, "It is my duty to inform you, you can't go to the vault." Mr. Friedberg told me about it and that was all. I didn't know they were going right down to it. They went out, the three of them, but I didn't know he went right down to the vault. He had no right to do that.

Q. Mr. Friedberg talked this whole matter over with you right during the investigation, didn't he?

A. Well, of course, we talked about the matter. It concerned me.

Q. Continuously, didn't he?

[fol. 685] A. It concerned me. They had no business invading my private property. That business was exclusive of that entirely.

Q. The business had to stand on its own feet?

A. Yes.

Q. Why did you loan it all the money if it had to stand on its own feet?

A. Pardon?

Q. Why did you loan it all the money you say you did?

A. Expecting to get it back.

Q. Couldn't you have expected to get back a mere account to establish credit?

A. How do you mean?

Q. If you had opened a bank account, that would have established credit, would it not?

A. You mean for them a bank account?

Q. If you put it in Mr. Friedberg's name.

A. It was in the Buckeye Tailoring name and I loaned the money as they needed it.

Q. The Buckeye Tailoring Company was what? It was Mr. Friedberg, wasn't it?

A. Certainly.

Q. Doing business as an individual?

A. But, that had nothing to do with my savings, Mr. Windom. Those were my personal savings.

Q. What about all the property Mr. Friedberg purchased [fol. 686] chased? Where did he get that money?

A. That didn't necessarily involve a lot of money because he kept trading up little by little.

Q. You advanced the money where necessary there, didn't you?

A. I don't know how much was ever involved, but at any one time there wasn't very much involved, very little.

Q. You did advance that money, did you not?

A. As I say, I don't recall, I don't know the real estate transactions offhand, especially I don't know.

Q. Well, there had to be some cash on some of them, Mrs. Friedberg. Did you or didn't you advance that?

A. Well, if they had to be, I must have advanced them. He didn't have any other source of getting it from.

Q. Do you want us to believe that with all that cash, that you are too afraid of your own husband to establish a credit rating for him by advancing him a few thousand?

Mr. Sillman: I am going to object to the form of that question, even on cross examination, Your Honor. I think it is unfair.

The Court: Overruled.

Q. What is the answer?

A. No, I wasn't afraid of my husband, but he went into that business and it had to pay for itself. He had to work it up. I advanced enough, I advanced plenty.

Q. Now, Mrs. Friedberg, you said in relation to COD's, [fol. 687] and I assume you mean mail COD deliveries or express COD deliveries—is that what that term referred to, that you had to loan money to cover those?

A. Yes.

Q. Mr. Sillman brought out that you deposited the checks

first in the bank and then the cash. Why did you have to loan money if they were withholding cash from the miscellaneous receipts in the drawer?

A. There wasn't sufficient. Those miscellaneous receipts didn't have sufficient money to cover the COD's that we had to accept.

Q. How often did you get a COD?

A. We had several every day.

Q. How often did you have to loan money?

A. I don't know. It depended upon the bank account.

Q. Approximately how often?

A. I couldn't say. The books will reveal that. Everything is on record.

Q. What did the books reveal? You kept them.

A. The cash book there.

Q. What does it show?

A. I don't have it. I can't remember.

Q. Did you loan money every day, every week or every month?

A. I don't know, Mr. Windom. As we needed it. As the cash——

Q. When did you need it? That's what I am trying to find out.

A. I don't know. It depended on what the items were that we had to pay for and what bills we had to take care of.

Q. This was strictly your own money, you want us to [fol. 688] believe, you were loaning?

A. Yes.

Q. Why does it list it as a loan from David Friedberg?

A. I put D. F. Friedberg.

Q. Are you D. F. Friedberg?

A. I am Mrs. D. F. Friedberg.

Q. Why didn't you put Mrs. D. F. Friedberg?

A. I wasn't so technical. I didn't start to figure out the technicalities of those things.

Q. Now, whatever gave you the idea of entering the miscellaneous income as D. Friedberg Loan? Whatever suggested it to you?

A. Well, the first loan I put in there I just put it as D. F. Loan Account, and I just didn't think any more and went

ahead and put the miscellaneous that way. I just didn't have any purpose.

Q. Why did you put the first one that way?

A. The first one was a loan.

Q. Now, let me repeat my question. Why did you enter for the first time miscellaneous receipts as D. Friedberg Loan?

A. As I say, the first miscellaneous receipts may have had some of my own money in it besides the miscellaneous money, and I started off with D. F. Loan Account and I just went on and worded it that way. Probably was a misnomer, but, however, I just did it without thinking anything of it.

Q. Well, you say it might have had some of your money in it. Did it or didn't it have?

A. Some of them did, yes.

[fol. 689] Q. Did the first one have?

A. The first one was my money, that \$500 one that I read this morning.

Q. I am not referring to that. I am referring to the first time that miscellaneous receipts were entered as D. Friedberg Loan?

A. Well, I don't know just which entry it was, and furthermore, it would be hard to say right now. At the time I knew.

Q. Do you still make the entries that way?

A. Yes.

Q. Yes?

A. I just continue to do things the way I have been.

Q. Even after the Bureau of Internal Revenue has audited the books and you found out it is completely wrong, you still make them that way?

A. I certainly do.

Mr. Sillman: I object to that. "You found out it is entirely wrong." I don't know about anything wrong or that this witness has found out anything is wrong.

The Court: Overruled.

Q. Mrs. Friedberg, when you were making those entries and carrying miscellaneous receipts as D. Friedberg Loan,

you knew they were receipts, income to the business from customers, didn't you?

A. Not all of them.

Q. Mrs. Friedberg, let's just take one that is completely miscellaneous receipts. Was there such a one?

A. There could have been, yes.

[fol. 690] Q. Now, that one, when you made that one, you knew that that was income from customers, didn't you?

A. Yes.

Q. And you knew it wasn't a loan, didn't you?

A. Yes.

Q. Did you?

A. In those particular instances, yes, where it was strictly a miscellaneous loan, yes.

Q. Now, Mrs. Appl, when she had taken care of the books, testified that she always carried the alterations, cleaning and pressing as a separate series of entries. Why did you abandon that system?

A. Because I didn't have time to do all of that.

Q. What were you doing that you didn't have the time?

A. I kept house and I kept my family going.

Q. How many entries did you have to make in the book each day?

A. Might have been several, a lot of them.

Q. What was the average?

A. Cleaning and alterations and——

Q. All entries, Mrs. Friedberg.

A. Beg pardon.

Q. How many total entries per day did you make?

A. There weren't any particular amount to any particular day. They may have been more in one day than another.

Q. May I borrow your cash book a moment. Please pick out a big day, Mrs. Friedberg, and tell me how many entries [fol. 691] you had to make in the book.

A. Well, just any particular day?

Q. Just pick out any one, what you would say a large day.

A. I don't know what you would call large or small. However, there might have been a lot of entries in the mis-

cellaneous, you see, and I just totaled those up. That's where I meant——

Q. Let's just answer that one question first.

A. Just what would you have me read?

Q. How many total, what was the number of entries?

A. Well, there were just seven on this particular day, of the checks and so on.

Q. And the miscellaneous income, then, would be—we could compute that, could we not, by taking a deposit slip, which would give us the number of checks that day, and then there would be several items reflecting the cash?

A. Miscellaneous?

Q. Yes.

A. Miscellaneous didn't particularly have checks. They were just small cleaning items, repairs, and then we had the ready-made stock suit items, and so forth.

Q. Were there a lot of them?

A. Well, as I say, some days there were more than others.

Q. Were there a lot or not? You told Mr. Sillman that was a relatively small part of your income. Was it or wasn't it?

Mr. Sillman: Just a moment, the witness did not testify [fol. 692] to that, if the Court please. She testified that the cleaning and pressing was a small amount, excluding the two separate contracts with the Government and with F. & R. Lazarus.

The Court: She may answer and explain if she desires.

Mr. Sillman: You changed the testimony.

Q. Now, practically, Mrs. Friedberg——

A. What was that question, again?

Q. I withdraw the former question. You could have made those entries pretty easily, could you have not?

A. I don't think so. This isn't all I had to do. I had a lot of correspondence to do and invoices to make, and then I had to get out into the store and wait on people as they came in, so I didn't have very much time and I did the best I could. Therefore, I just listed them as a total sum.

Q. You said that you followed Mrs. Appl's custom, shall I say, in relation to accommodation items. Why didn't

you follow her custom in relation to the pressing and alterations?

A. I tried to but I found myself unable to go on.

Q. Too much of that stuff for you to do?

A. Beg pardon?

Q. Too much of that for you to do?

A. Yes, in addition to all the other duties that I had, it was.

Q. Business was pretty good?

A. It isn't a case that business was pretty good, it was just a case of a lot of other work to do. You can have a lot of correspondence and yet business may not be good. [fol. 693] Q. Well, let me just, for example, take the date of June 23, 1947. I notice there an entry of \$18.61 cash.

A. What date?

Q. June 23, 1947. \$500 deposit that day, and it is made up of three items. Do you have the place, Mrs. Friedberg?

A. June 23?

Q. June 23, 1947.

A. You have a lumped—

Q. You have a lumped entry of \$500.

A. Yes.

Q. That's made up of \$18.61 cash. That couldn't have taken very much time to have entered that, could it?

Mr. Sillman: What are you reading from?

Col. Windom: Deposit slip.

Mr. Sillman: Are you reading from one of Mr. Friedberg's deposit slips?

Col. Windom: From one in evidence.

Mr. Sillman: All right.

Q. —And two checks. How much time would it have taken you to make those entries?

Mr. Sillman: I am going to object. He is reading from the record the entries there. Now, if he means make the entry some place again, a second time, the question should be specific. That's the reason I asked the question, if the Court please.

The Court: Your objection will be sustained. Now, ask [fol. 694] her specifically.

Q. Well, Mrs. Friedberg, I am trying to find out, of course, why you carried these things as D. Friedberg Loan when they were miscellaneous receipts, and you have told me because you were too busy. Now, I am asking you in respect to June 23, 1947, how much time would it have taken to have itemized the three deposit slip entries that day on Mr. Friedberg's record.

A. I don't have that. You have \$500 and what?

Q. You have \$500, don't you?

A. That's a loan.

Q. Well, it just so happens it wasn't a loan.

A. No?

Q. That's a check from Lazarus for \$429.80. That isn't a loan, is it. There is a check from Dillie for \$51.59. That is not a loan?

A. That check from Lazarus for how much?

Q. \$429.80. That isn't a loan, is it?

A. I will give you an account of that. You see, I started out handling the miscellaneous and entering it that way, and those were alterations. That was an alteration job, so I just entered that, handled that the same way. I probably shouldn't have handled it that way, I probably should have entered it under the specific name. It being an alteration, I handled it that way, but nevertheless it got into the bank.

Q. Mrs. Friedberg, it wouldn't have taken any time at all to make complete entries.

A. You see, I handled it the other way, and I didn't think [fol. 695] about revising my system. I just continued the same way.

Q. You can't remember why you started that way?

A. No—yes, for lack of time. I told you that.

Q. When you first started it was for lack of time?

A. Yes.

Q. Mrs. Friedberg, if you were so busy why did you enter the names of the writers of the checks on your deposit slips?

A. The writers of the checks?

Q. Yes.

A. You mean on the specific—

Q. On the deposit slips at the bank.

A. Well, those were made—those were made-to-measure and those were entered in the order book specifically.

Q. I don't think you understand my question, Mrs. Friedberg.

A. Perhaps I don't. I am sorry.

Q. For example, Mrs. Friedberg, in these deposit slips you will find that the surnames are entered.

A. Yes.

Q. If you were so busy that you couldn't enter those names on your own records, why did you enter them on the deposit slips?

A. Those were checks. Those were accounts there, the regular accounts, made-to-measure suits. Those were not alterations.

Q. The gentlemen have testified that they purchased suits that are shown there that are not on your cash book.

A. Those few, I will admit, were an error, but otherwise [fol. 696] I entered each and every one individually.

Q. Just the people that testified were in error, is that the idea?

A. We may have been, I don't know. Maybe there are a few more, I don't know, I can't say. But it just happens that those were, but, nevertheless, they got into the bank.

Q. Mrs. Friedberg, what did you have in cash at the end of 1947?

A. Why, you have the record, I believe. The agents have given that to you.

Q. What is your recollection?

A. Around \$100,000.

Q. How much, please?

A. Around \$100,000, I believe. Did you mean the cash or total amount?

Q. Cash is what I asked you for.

A. The cash was nineteen six.

The Court: What do you refer to by those figures?

The Witness: \$19,600.

Q. Mrs. Friedberg, you have excused the fact that the books beyond October 10, 1947 were kept in pencil by the fact that that's the date the investigation started.

A. Yes.

Q. Why didn't you keep them in ink after the books came back to you?

A. Well, I copied from the sheets.

Q. Why not copy it in ink?

[fol. 697] A. I just started off that way and I just continued, for no particular reason. I got in the habit on these sheets and I just handled the pencil and continued on through.

Q. After the investigation started why did you stop entering the names on the deposit tickets?

A. Because I didn't want any more of our customers being molested. They came to us and told us.

Q. Give us the names of those that came to you.

A. I can't remember exactly now, but they came to us at the time that these men were there.

Q. As an actual matter of fact, Mrs. Friedberg, you are the one, are you not, who told Mr. Friedberg to tell Mr. Clager that those entries on the deposit slips were solely checks cashed?

A. Solely checks that were cashed?

Q. That is right. You told Mr. Friedberg to tell Mr. Clager that, didn't you?

A. Oh, no, Mr. Windom, I don't think so. Oh, no.

Q. You are sure now that you didn't?

A. I don't remember of ever having made any such statement, that all those checks on those deposit slips were checks that were cashed.

Q. Let me make myself clear. When Mr. Clager was asking Mr. Friedberg what all of those checks deposited to the bank account were and Mr. Friedberg came to you about the thing, you stated to Mr. Friedberg in Mr. Clager's hearing—I might say that you did not know that he was listening—to tell him that those were accommodation cashing of checks.

[fol. 698] A. All of them? I never said such a thing as that. That isn't so.

Q. I am referring now to those that aren't in the cash book.

A. The checks that were on the deposit slip?

Q. But not in the cash book. That's what I am asking you.

A. Well, yes, there are some checks that weren't in the cash book and those were checks that were cashed.

Q. You did tell Mr. Friedberg to tell Mr. Clager that?

A. I suppose I did, but that's what it is. There is nothing wrong about that because that is the truth.

Q. Why didn't you enter ready-made suit sales on your cash book in detail?

A. Ready-made sales?

Q. Yes.

A. In the cash book?

Q. Or on any records in detail?

A. What do you mean by detail, for example?

Q. Whatever you meant in direct examination.

A. Made-to-measure suits were entered.

Q. I asked you why you did not enter the ready-made suits.

A. Oh, the ready-made, I beg your pardon. Well, those were stock suits.

Q. Why didn't you enter those?

A. Because they were made up for stock, and anybody coming in and buying the suit that way Mr. Friedberg would sell it to them off the rack there.

[fol. 699] Q. Wasn't it just as important to know who your customers were for one type of suit as another?

A. No. Because, you see, the others, the made-to-measure—they were measured up and the order entered into the order book.

Q. Didn't you ever expect to get resales to those ready-made customers?

A. They went and bought a suit out of stock. That could happen again, so what difference does it make who they are.

Q. Am I to understand that you and the business just never cared whether they came back any more?

A. Oh, yes, we cared.

Q. How did you expect to get them back if you didn't know their name?

A. What difference does the name make? If we knew the name or not, they would come back.

Q. Mrs. Friedberg, you have said repeatedly that this money and cash and bonds represented strictly your money, is that right?

A. Yes.

Q. Why is it, Mrs. Friedberg, that you went to that box so infrequently as compared to Mr. Friedberg if it was your money?

A. It was handy for him to go because he ate around in that neighborhood and I just sent him down.

Q. Where did you eat, Mrs. Friedberg?

A. When I used to go to the bank to make deposits I went in another direction. Our bank is up on Town and High and this bank is on Main Street.

[fol. 700] Q. Is that the only reason why Mr. Friedberg went all the time, or, I should say, substantially all the time?

A. I wouldn't know of any other reason. I can't see any other reason. It is just a matter of convenience, that's all.

Q. In relation to these payroll checks that you were asked about toward the end of direct examination, you said you entered the word payroll checks, if I recall.

A. Well, if you want an explanation of that, I suppose I can give that to you, too. I misunderstood Mr. Sillman. I very often used to make up payroll check and used the money that I had there to put into the envelopes before I would go to the bank, and then cash the check after I went to the bank and put the money back and I would deposit the check instead.

Q. Well, I believe that was an error. You did not use the word payroll checks in relation to those.

A. That was a definite error. I just misunderstood Mr. Sillman.

Q. What names did you put on the deposit slip?

A. For what?

Q. On those checks?

A. The name who the check was payable to.

Q. You made it to the payee?

A. Yes.

Q. And, if there were several endorsements what did you put on it?

A. I just put our endorsement on it.

Q. I mean, how did you carry it on the deposit slip when there were two endorsements?

[fol. 701] A. What did the endorsement have to do with the deposit slip? I merely put the name of the—

Q. You still carried the name of the first payee, is that right?

A. Certainly.

Q. And, that would be true even though he was not the one who cashed the check?

A. Yes.

Q. Now, Mrs. Friedberg—

A. But, pardon me, Mr. Windom, I usually knew who the party was that was cashing the check and I don't believe—yes, that's right. Now, the party that cashed the check, even if there would be two endorsements, I would know the party, you see, I would identify them. So in that way I entered the check by the name that was on the check.

Q. Mrs. Friedberg, when did you acquire the property on Nelson Road?

A. I think back in 1929, if I am not mistaken.

Q. And, how was that property paid for?

A. I don't know, Mr. Windom. I said when it came to real estate transactions Mr. Friedberg would have to answer those.

Q. You lived in that property as a home, did you not?

A. Yes, for sometime.

Q. How old were your children at that time?

A. Neither one of them were of school age yet.

Q. What do you mean by school age?

A. Six years is usually the age a child is enrolled in [fol. 702] school, I believe.

Q. At the time it was purchased you gave a mortgage for \$9000, did you not?

A. I am sorry, I can't answer the real estate transactions.

Q. You signed it, Mrs. Friedberg.

A. I signed a lot of papers.

Q. Title was taken partially in your name, wasn't it?

A. As I said, I just hate to do it, but I just can't help it. I don't know the real estate transactions.

Q. How long did you live in that home?

A. Well, I don't recall now. We moved in and out a couple of times. I can't recall exactly.

Q. Why did you move out, Mrs. Friedberg?

A. Well, we wanted to get—you see, we had no school there. We had a portable school they were putting up, and

I wanted to get out of there to be able to give the children a place for a better schooling.

Q. Mrs. Friedberg, you moved out of it because you couldn't keep up the payments, didn't you?

A. Well, I guess you are answering the question.

Q. Isn't that right?

A. No, it is not right.

Q. You moved out and you tried to rent the property, didn't you, to keep up the payments?

A. We tried to rent the property, but I didn't say—

Mr. Sillman: Let her finish.

[fol. 703] Q. Have you finished the question?

A. You wanted me to answer which question?

Q. They said you weren't finished. If you have anything else to answer, go ahead.

My next question is where did you move from there?

A. To Bryden Road.

Q. Where did you move from Bryden Road?

A. I think we went back to Nelson Road, if I am not mistaken. I am not too certain about that.

Q. Well, actually, you moved from Nelson Road and you eventually got down on Lilley, didn't you, 533 Lilley Avenue?

A. Yes.

Q. Is that right?

A. Now, I don't know if we moved from Nelson Road to Lilley. I am not sure about that.

Q. Then you moved to 1520 Menlo Place, didn't you?

A. Yes, that's right.

Q. How old were your children at that time?

A. They were still in grade school, I think.

Q. Mrs. Friedberg, 1520 Menlo Place is and was a colored neighborhood, wasn't it?

A. Not at that time it wasn't, Mr. Windom.

Q. Who moved in the house immediately after you?

A. Immediately after, to Menlo Place?

Q. When you left Menlo?

[fol. 704] A. How should I know that? I didn't own the property. I only rented there.

Q. Mrs. Friedberg, Menlo Place is immediately adjacent to Taylor Avenue.

Mr. Sillman: She started to say she didn't own the place, she rented the place. Let her answer.

Q. Mrs. Friedberg, in 1936 you had far in excess of \$50,000, you say?

A. Yes.

Q. And you moved to 1520 Menlo Place, right off Taylor Avenue, didn't you?

A. That was a mighty fine neighborhood, mighty fine.

Q. Didn't you move there?

A. Yes.

Q. There were colored families all around through there right at that time, weren't there?

A. Well, I want to tell you something, Mr. Windom. If it was good enough for the Westwaters and Mr. Gager, who was one of the firm of Potter-Gager, to live in, it surely was good enough for me, and they lived right across the street from us.

Q. Mrs. Friedberg, why did you take the tremendous comedown from the Nelson Road property to the Menlo Place property?

Mr. Sillman: I object to the form of that question.

The Court: Yes, sustained.

Q. Why did you move to Menlo Place?

[fol. 705] A. Why does anyone move to any place? I wanted——

Q. You moved from Nelson Road because there wasn't a school, you said?

A. Yes.

Q. Is there a school around Menlo?

A. My children's school was right around Menlo Place, the Fair Avenue School.

Q. What school did they go to?

A. Fair Avenue.

Q. How much closer was that than where you lived on Nelson Road?

A. A lot closer.

Q. How much?

Q. Do you know where Nelson Road and

A. I have lived on the east side all of my life.

Q. So have I and I still know there is a gap between Menlo Place and Fair Avenue School Road and Fair Avenue School.

Q. How much difference is there?

A. Well, I don't know as to measurement, there would be approximately four blocks, a block, and for youngsters that's a long distance.

Q. Mrs. Friedberg, with over \$50,000 in cash, did you permit the foreclosure of your home?

A. I still can't answer anything about this transaction, Mr. Windom. I am sorry.

[fol. 706] Q. It was your home, wasn't it?

A. I lived in it, yes.

Q. And it was in your name?

A. That still doesn't make it any different, the same as it was. Mr. Friedberg will handle those questions, because there are some details about those things.

The Court: Now, ladies and gentlemen of the jury, the Court intends to adjourn until tomorrow at ten o'clock. During the intermission it is your duty to follow the instructions heretofore given you in every respect.

(A recess was taken until ten o'clock, January 3, 1952.)

THURSDAY MORNING SESSION

January 3, 1952

FRANCES FRIEDBERG, resuming the stand, testifies as follows:

Cross examination (Cont'd.).

By Col. Windom:

Q. Mrs. Friedberg, when did you first move to Nelson Road property?

A. I think it was around 1929.

Q. What year?

A. I believe it was about 1929.

[fol. 707] Q. And, how long did you live there?

A. I don't remember exactly, Mr. Windom.

Q. Approximately how long? You lived there ten years, didn't you?

A. I don't—

Q. Was it five, ten or fifteen?

A. It wasn't fifteen, and I don't know if it was ten.

Q. I will correct my statement. You actually owned the property eight years, did you not?

A. I said I didn't know.

Q. Form '29 to '37, that's correct, isn't it?

A. I don't know, Mr. Windom, exactly. I said I didn't know exactly.

Q. Is that substantially right? It was your home.

A. I know.

Q. Is that substantially right?

A. I think in that neighborhood.

Q. All right. Now, you told me that you moved to Menlo Place because that was closer to school. Why did you first move to Lilley Avenue? That wasn't closer to any school, was it?

A. We were in and out of Nelson Road, I think, two or three times, you see, and as I say, when it came to the real estate transactions, Mr. Windom, Mr. Friedberg will explain in detail exactly.

Q. Who took care of the children and their school work, you or Mr. Friedberg?

A. I took care of the children.

[fol. 708] Q. You said the reason for moving to Menlo was because it was nearer to the Fair Avenue School. The fact is, that you moved from Nelson Road to Lilley. Why did you move to Lilley?

A. From Nelson Road to Lilley? I don't recall if that's correct.

Q. You don't ever recall living on Lilley?

A. I didn't say that. I said we lived on Lilley but I don't recall whether we moved right from Nelson Road to Lilley.

Q. That has already been agreed to, stipulated in Court here.

A. I didn't agree that I moved directly from Nelson Road to Lilley. I didn't say that.

Q. Why did you move to Lilley?

A. I just don't recall the reason right now.

Q. That's a tremendous distance from any school, isn't it? That's in the Livingston Avenue school district, isn't it.

A. I don't know where the Livingston Avenue school is. No, it wasn't near Livingston Avenue.

Q. Six hundred something?

A. 533, you said, exactly.

Q. All right, where is that?

A. I believe that's right near—one block from Main Street.

Q. Which direction from Main Street?

A. South, that's Mound Street.

Q. What school district is it in?

A. I don't know the schools very well around there.

Q. When was your daughter born?

[fol. 709] A. November 1925. Incidentally, Mr. Windom, I have a correction to make, too. You stated yesterday that when Mr. Weiss lived with us I had five people to feed. We had no children at the time and for several years after that we hadn't had any children, so there weren't any five people there.

Q. So, you were able to save more money?

A. Well—however, I am just making the correction.

Q. Yes. Mrs. Friedberg, am I to understand that you know nothing about the purchase or the foreclosure of the Nelson Road property in which you lived, as a home, for seven or eight years?

A. I didn't say I know nothing, I mean I don't know the detail. I know it took place but I don't know the detail.

Q. Why did it take place?

A. I don't know, Mr. Windom. You will have to ask Mr. Friedberg. The answer will be the same, Mr. Windom, because I do not know. Pressure wouldn't bring out any other answer.

Q. Now, Mrs. Friedberg, if you had, as you say, far over \$50,000 in cash in 1936, just one year prior to that foreclosure, why, when the sheriff came to you with his writ of execution, did you tell him you had nothing?

A. I said nothing, Mr. Windom——

Mr. Sillman: I object, if the Court please, to that line of questioning. There isn't a word——

The Court: Sustained.

Col. Windom: The entire record is in evidence, the [fol. 710] sheriff's return and everything.

The Court: There is no evidence of what she told the sheriff.

—Mr. Sillman: Or that he went to her.

Col. Windom: The sheriff's return is in evidence.

Q. The sheriff did come to you?

A. I don't know, I haven't seen any sheriffs.

Q. Didn't the sheriff come to you with his writ of execution?

A. No, he did not.

Q. He didn't come to you?

A. No, sir.

Q. Therefore, the return is erroneous?

A. I don't know anything about it.

Mr. Sillman: I object, if the Court please.

The Court: Sustained.

Q. How much did the Nelson Road property cost you?

A. I don't recall that.

Q. Approximately how much did it cost?

A. I believe, Mr. Windom, I said when it came to the real estate transactions——

Q. I have heard that many times.

A. The answer is still the same.

Q. I am going to keep right on asking you. Approximately how much did the Nelson Road property cost you?

A. I am sorry, I don't know.

Q. You did make payments on it while you were in it, didn't you?

[fol. 711] A. I guess we must have. I don't recall the exact amounts.

Q. Mrs. Friedberg, Mr. Friedberg brought all his pay home to you?

A. Yes.

Q. If the payments were made, you made them to him.

you gave him the money?

A. Yes.

Q. Did you make payments?

A. We evidently did, having lived there.

Q. Mrs. Friedberg, with all that cash, why did you buy the property on a mortgage plan and pay interest?

A. Again, I say, I don't know the detail of the real estate transactions. I am sorry.

Q. I am not asking for details. Just why would you waste your money when you didn't have to?

Mr. Sillman: I object to the form of the question.

The Court: Overruled.

A. I don't know the details and I don't aim to answer anything. I don't know anything about.

Q. The Nelson Road property was a nice property, wasn't it?

A. Surely.

Q. And with far in excess of \$50,000 in 1936, why did you let it go through foreclosure in 1937?

A. There was a reason and I can't give you the reason, for I don't know the details.

[fol. 712] Q. Well, I am not asking for any detail. You must have some reason.

A. I can't answer.

Q. The property was in your name?

A. I know.

Q. You were a party defendant to the suit, a deficiency judgment was rendered against you.

A. That's because my name was on the paper, but that doesn't say that I transacted—

Q. Can't you give any explanation at all why you did that?

A. No, I can't give the explanation. You will get the explanation from Mr. Friedberg.

Q. It was your home?

A. Yes.

Q. Mrs. Friedberg, when you bought that place why didn't you pay cash for it?

A. Again, I say, I can't answer that, Mr. Windom.

Q. You must have talked it over with Mr. Friedberg, didn't you?

A. Oh, yes, but I can't remember every incident that far back.

Q. Why, Mrs. Friedberg, did you shift to a Home Owners Loan?

A. I don't know, Mr. Windom. That is, I can't give you the correct answer there. There is an explanation for that but I can't give it to you, for I don't know.

Q. This property at 701 Bedford Place which was purchased in 1924 on the day before Christmas, to be exact. [fol. 713] You remember that, don't you?

A. I remember the Bedford Place property.

Q. Is that the property you lived in as a home; that is, before you went to Nelson?

A. 701?

Q. Yes.

A. Yes.

Q. And, how long did you have that?

A. I don't remember the exact time.

Q. That property was also in your name, wasn't it, Mrs. Friedberg?

A. As a matter of fact, all the properties, I believe, were in my name, so if that has anything to do with the transactions, I can't explain them.

Q. You told us that the 705 Bedford Place was a \$20,000 property. How much was the 701 Bedford Place worth?

A. I don't remember that. That is, I can't tell you, Mr. Windom.

Q. Mrs. Friedberg, you lived in 701. You didn't live in 705. Certainly you have some recollection of 701.

A. I lived in a lot of places, Mr. Windom, but when it came to the actual transactions I didn't have a thing to do with them.

Q. What is your best judgment as to what 701 was worth?

A. I don't know.

Q. It was a valuable house, wasn't it?

A. Well, I think a lot of things are valuable. It all depends what you call valuable and what other people might consider valuable. Yes, to me it was valuable.

Q. Was it valuable?

A. I said it all depends on how one interprets value.

Q. Mrs. Friedberg, with all the money you brought from Dayton to Columbus and the money you were saving, why did you buy that house on a mortgage plan and give mortgages on it?

A. I can't answer that any more than I have the last questions.

Q. Why did you permit it to be foreclosed?

A. I had nothing to do with the real estate transactions, Mr. Windom.

Q. Mrs. Friedberg, you say you have been very frugal and saving all your life, haven't you?

A. Yes.

Q. Do you consider it a matter of good judgment to leave a property go by foreclosure?

A. Whether I considered it good judgment or not, Mr. Windom, perhaps the circumstances were such that the action at the time was necessary.

Q. Now, Mrs. Friedberg, on the Sheldon Avenue property—you acquired that July 11, 1928. Why did you buy that one on the mortgage basis instead of paying cash for it?

A. I can't say. It is still in the real estate category and I can't answer that.

Q. You are aware, of course, that when you buy on a [fol. 715] mortgage basis you have to pay interest, don't you?

A. Surely.

Q. Now, on the Bedford Place and on the Sheldon Avenue property when the payments were made on that, according to your theory, you advanced the money to make those payments, didn't you?

A. I suppose I have.

Q. Don't you remember doing it?

A. No, I don't remember very much of the real estate transactions.

Q. How do you remember having \$3,000 when you left New York, then?

A. Well, I don't know, but shall we say maybe coincidence; I don't know. Some things do stay with you, others don't. You can't remember every detail in your life, Mr.

Windom. You have taken over a period of almost 54 years, and it is very difficult to remember details as you would wish them. I am sorry.

Q. Well, this is quite recent. What kind of a house was the Sheldon Avenue property?

A. It was a double.

Q. Was it a reasonably valuable house?

A. Again, I say, I don't know what you might call valuable or not valuable.

Q. I am asking you to tell us.

A. I can't set any values on property, Mr. Windom. I am not a judge, I am not an appraiser.

[fol. 716] Q. Well, it had to be worth over \$5,000 because there was one mortgage for \$5,000 and another for \$1500. That would be \$6,500. You did pay something down on it, didn't you?

A. I don't recall, Mr. Windom, how the transaction ran.

Q. Why did you permit that one to go on foreclosure?

A. For the same reasons that the others—I had nothing to do with them.

Q. Mrs. Friedberg, in relation to the Sheldon Avenue property, you were a party defendant to that suit, were you not?

A. If my name was on the paper, I suppose I must have.

Q. Were you or weren't you a party defendant?

A. I don't know. I again, say it is a real estate transaction and I can't answer that, Mr. Windom.

Q. Well, do you remember employing Schanfarber and Schanfarber to represent yourself and Mr. Friedberg?

A. I never employed any attorneys because I had no part in the real estate transactions.

Q. Mrs. Friedberg, somebody paid them, and you say you took care of all the money.

A. I could have taken care of the money, but that doesn't say I paid Schanfarber and Schanfarber.

Q. Did you advance the money to pay them, Mrs. Friedberg?

A. I don't remember at this time whether I have or haven't.

Q. Mrs. Friedberg, in case No. 143854 Schanfarber and

Schanfarber, representing yourself and David Friedberg, [fol. 717] represented to Judge Cecil Randall as follows:

"Now come the defendants, David Friedberg and Frances F. Friedberg, and represent to the Court that a judgment has been taken against them in the within action in the sum of \$5,533.91, together with interests and costs, and for foreclosure of the premises described in plaintiff's amended petition; that the premises have been appraised at \$4,500 and have been ordered sold on the 9th day of March, 1935.

"Defendants further represent to the Court that the property in question is a double house; that both sides are rented at a rental of \$20 per month; that a receiver has been appointed to collect said rents and is collecting same, and that the income therefrom is sufficient to pay current taxes and interest.

"Defendants further represent that said real estate is worth in excess of the aforementioned judgment, but that if it is sold on the present depressed market it will bring far less than said judgment.

"Wherefore, defendant moves the Court for an order postponing the aforementioned sale of said premises, in accordance with the provisions of Section 11588 of the Ohio General Code, known as the Best Act."

Does that refresh your recollection as to the value of that property?

A. No.

Q. Now, Mrs. Friedberg, based upon those representations that the property was bringing in more than enough to pay the taxes and interest, that was a valuable property, wasn't it?

A. Well, again I say, I don't know. I don't appraise properties and I haven't been either.

[fol. 718] Q. It was a producing property, wasn't it?

A. Well, I suppose if that's what you say it was, it must have been. I don't know. I know nothing of the real estate transactions.

Q. Now, in the order of Judge Randall, entered in open court, Judge Randall says:

"This matter came on for hearing upon the motion of the defendant to postpone the sale of the premises described

in the petition under the provisions of Section 11588 of the General Code of Ohio; and the court, after hearing had announced that the sale would be postponed for a period of six months provided the defendant pay the costs already incurred in advertising the premises for sale amounting to \$10.25, the current taxes now due and payable, and the sum of \$10.00 per month to the plaintiff during said six months period. The defendant by his counsel thereupon announced in open court that he would not be able to comply with those terms. Whereupon the Court overruled defendant's motion to postpone said sale."

Why were either you or Mr. Friedberg unable to comply with those terms?

A. I can't answer that, Mr. Windom. I know nothing of the real estate transactions.

Q. Mrs. Friedberg, the indication is from that, that for a sum some place in the vicinity of \$60 to \$85 raised over a period of six months, you could have saved that house from sale at that time. Why couldn't you raise that money if you had far in excess of \$50,000 in cash?

Mr. Sillman: I object, if the Court please.

The Court: Overruled.

[fol. 719] A. I can't answer that, Mr. Windom. It is still the same question as to real estate.

Q. Now, on that property you made your last payment March 31, 1932. With far in excess of \$50,000 in cash in 1936 why couldn't you make those payments, Mrs. Friedberg?

A. My answer is still the same, Mr. Windom.

Q. What is your answer?

A. I know nothing of the real estate transactions.

Q. Am I to understand that you took no interest—

A. That's right.

Q. —in a property of a value which you represented to the court in excess of five or six thousand dollars?

A. I had no part in the transactions of the real estate.

Q. But you paid any down payment, didn't you? You paid the interest payments on it, you paid the principal, didn't you?

A. I didn't pay. Mr. Friedberg transacted this.

Mr. Sillman: Mr. Windom, will you pardon me for interrupting a moment to ask you to tell me the date of the entry which you just read to the jury and the case number, so I can identify it.

Col. Windom: The number is 143854.

Mr. Sillman: And, what is the date of the entry, please?

Col. Windom: The date of the entry is March 12, 1935, one year before she had far in excess of \$50,000.

Mr. Sillman: Thank you very much, Mr. Windom.

By Col. Windom:

[fol. 720] Q. How much money did you have in 1935, Mrs. Friedberg?

A. I can't recall right now, Mr. Windom.

Q. Well, how much did you save between 1935 and 1936?

A. I don't remember that.

Q. Did you save all of the \$50,000 in that year?

A. Mr. Windom, I said I didn't recall any particular figures now.

Q. Did you or did you not?

A. Did I save \$50,000 in that year?

Q. That's right.

A. No.

Q. Did you save anything approaching that?

A. Pardon?

Q. Did you save anything approaching that in one year?

A. No.

Q. Mrs. Friedberg—and I don't mean to be uncharitable—why does your memory appear to be so different and your ability to remember so different between Mr. Sillman's questioning and between my own.

A. I don't think it is. I answer that I know that I can answer, and I am not going to answer any questions unless I know that they are facts, or rather, close to what is the truth, to be a fact.

Q. And, you have no recollection, have you, as to why you permitted your own home to be foreclosed, your husband and two children had to move out into rental property? You have no recollection, is that right?

Mr. Sillman: I object to the form of that question. "Had to move out."

[fol. 721] The Court: Overruled. This is cross examination.

A. Mr. Windom, all these real estate transactions will be explained by Mr. Friedberg and you will know the reason.

Col. Windom: That's all, Mrs. Friedberg.

Redirect examination

By Mr. Sillman:

Q. Mr. Windom asked you whether you showed Mr. Curtis the memorandum that you testified you kept, on which you kept track of what you had, and your answer was that Mr. Curtis never asked you for it. Mr. Windom also asked you whether you showed that to Mr. Clager, and you indicated that you had not talked to him. Now, was there anything different on that memorandum than what the agents found when they went to the box and when they examined the bank accounts?

A. No, Mr. Sillman.

Q. Was that memorandum a memorandum for the year 1915 or 1916, or 1922, or was it for 1947?

A. 1947.

Q. In other words, it was a memorandum of what you had at the time the agents went to the books and questioned you? They saw with their own eyes, did they not?

A. That's right; that's right.

Q. Did you ever tell Mr. Friedberg or Mr. Clager, or anybody else, that all checks which were deposited in the Buckeye account, which were not listed in detail in the cash book, represent the checks which you had cashed for [fol. 722] some customers as accommodation?

A. Definitely not.

Q. That was not the fact, was it?

A. No, indeed.

Q. Were there some checks that were cashed for customers?

A. Some, yes.

Q. And, in comparison with the total deposits over the years 1945, '46 and '47, how would the numbers compare

as between checks that you cashed for customers and checks which came in as income from customers?

A. They were relatively small.

Q. Which were relatively small?

A. The checks that I cashed.

Mr. Sillman: That is all.

Recross examination.

By Col. Windom:

Q. Mrs. Friedberg, this memo slip, how big a piece of paper did you normally keep that memo on?

A. I didn't have any particular size paper.

Q. What did you normally use?

A. Most any size sheet paper.

Q. Would you just give us some idea?

A. Well, we have scratch pads about this size.

Q. And, when would you discard any given one of those?
[fol. 723] A. When I would rewrite it. I would make any changes and I would rewrite it and I would get rid of the old one.

Q. Well, how often would that occur?

A. That depended. I can't say.

Q. You mean you would throw the sheet away before it was full?

A. I don't know. It is not a case of filling up the sheet. It was just a case of revising all the figures, you see.

Q. Why would it be necessary to rewrite all the figures if you were only carrying a balance?

A. Now, you mean a balance of what?

Q. We are referring to your cash memo, I assume, that Mr. Sillman was asking you about; your slips that you didn't show to Mr. Clager or Mr. Curtis.

A. No, I kept a complete list of everything on that slip.

Q. How often did you make a new one?

A. As often as I felt it necessary.

Q. How often would you feel it necessary?

A. It wasn't a case of how often I felt it necessary, just because I wanted to do it. It is a case of what I would have done at the time, whether I purchased something, whether

I changed cash, bought a bond or something like that, and I would itemize everything in detail.

Q. Well, now, let's see if I understand. I assume on January 1, 1937 you had a memo which itemized everything you had in detail at that time?

A. Yes.

[fol. 724] Q. And as you bought another bond, what did you do, make a new slip or add to it?

A. I don't recall whether I added to it. I revised my figures. What I mean to say is, I deducted that amount out of the cash and put it down as a bond.

Q. What was your normal custom?

A. I had no particular custom, Mr. Windom.

Q. Remember, Mrs. Friedberg, you have testified that you were so busy you could not make detailed entries in the cash book. Are you now going to say that you recopied that slip every time that you made a purchase?

A. These didn't require daily entries, Mr. Windom. This might have occurred occasionally, and I could do that in the evening at home, too, you know.

Q. Then, the memo that Mr. Sillman was referring to would not only have been a tabulation of what you actually had in the box, it would also have contained some previous transactions unless you at that very time had recopied it, wouldn't it?

A. I don't understand.

Q. If it was a running memo, it would show more than your present situation, wouldn't it? It would show some of your past situation.

A. Not necessarily.

Q. Isn't that true that it would do that, Mrs. Friedberg?

A. I don't get you.

Q. And, therefore, the mere inventory of the box would not exactly tally with all of the entries on that memo, because [fol. 725] some of those would have been earlier entries and there might have been a change, isn't that true?

A. No. Why?

Col. Windom: That is all.

Mr. Sillman: No questions.

The Court: You are excused. Call your next witness.

DAVID FRIEDBERG, being first duly sworn as per law, was examined and testified as follows:

Direct examination.

By Mr. Sillman:

Q. State your name?

A. David Friedberg.

[fol. 726] Q. How many children do you have?

A. Two.

Q. Who are they and what are their ages?

A. Wayne is 24 and Elaine is 26.

Q. Where did you live when you were first married?

A. In New York.

Q. And, how long did you live there, Mr. Friedberg?

A. Oh, about a year, I would say.

Q. Where did you move from New York?

A. To Dayton.

Q. And, about when did you move from New Dayton?

A. I believe that was about 1916.

Q. How long did you live in Dayton, Mr. Friedberg?

A. I would say about five and a half, six years.

Q. Where did you move from Dayton?

A. To Columbus.

Q. And, have you lived here since the time you moved here?

A. Yes, ever since.

Q. When did you move to Columbus, Mr. Friedberg?

A. It was in 1922 or '23, thereabouts.

Q. When you moved to Columbus in 1922 were you in business or were you employed, or what?

A. Yes, it was the business that moved from Dayton to Columbus.

Q. And, what was the name of the business?

A. Buckeye Tailoring Company.

Q. Was that an individual business or a corporation?

A. It was a corporation.

Q. Who was associated with you in that business?

A. There was a Mr. Nathan Weiss and Meyer.

Q. And, what was your connection?

A. Well, I did the selling.

Q. I mean, were you an officer?

A. Yes, I was secretary.

Q. Did you own stock in the company?

A. Yes, sir.

Q. Do you recall the approximate date when that corporation was dissolved?

A. That was in 1941, I believe.

Q. To refresh your recollection, does February 3, 1941 refresh your recollection?

A. Yes.

Q. And, when the corporation was dissolved, what became of the physical assets of the corporation?

A. I purchased them.

Q. And, what did you do, then?

A. Why, I continued on in the same manner for a short [fol. 728] period, having Mr. Cohen, the former associate, do some of the finishing of the garments for me. He finished the coats. Having been unable to take care of these coats for me at a profitable basis, Mr. Cohen gave up the shop.

Q. Were you then operating as an individual?

A. Yes.

Q. Do you mean when you say you continued on—did you continue on in the same premises?

A. The same premises.

Q. How long did you occupy the same premises that the corporation had occupied?

A. I believe it was about six months.

Q. Where was that location?

A. At 180 East Long Street.

Q. In what city?

A. Columbus.

Q. Then you moved from there to what address?

A. To 180 South Third Street.

Q. And, is 180 South Third Street the place where the business is now operated?

A. Yes, it is still there.

Q. And, has it been operated at that place ever since you moved there?

A. Ever since, yes, sir.

Q. What name do you operate the business under, Mr. [fol. 729] Friedberg? Name or names.

A. The name is the Buckeye Tailoring Company and the American Mill Tailors.

Q. And, have you ever used any other trade names in the operation of the business?

A. With our finishing plants we use the name of the Jacobson Tailoring Company.

Q. Do you know the names of any other concerns engaged in a similar business which use more than one trade name?

A. Oh, yes.

Q. Will you name some of them?

A. Kahn Tailoring Company of Indianapolis. There is a Scotch Woolen Mills in Chicago.

Q. Now, the Kahn Tailoring?

A. They use the name of Sterling. They also used another name, but I am just this minute not familiar with it.

Q. Name off some more?

[fol. 730] A. Then the Scotch Tailors in Chicago, they were known as the Chicago Kahn, and there is a Globe Tailoring in Cincinnati that went under the Master Tailors.

Q. Can you think of any others?

A. Oh, there are numerous. Practically all the concerns in that line of business make it a practice of using another name.

Q. Now, in your particular business, what part of the business did you operate under the name of American Mill Tailors?

A. Well, the American Mill Tailors was used as a retail outlet.

Q. And, what part of the business did you operate under the Buckeye Tailoring Company trade name?

A. Well, the Buckeye Tailoring Company was the wholesale business.

Q. Did American Mill Tailors have separate books and records?

A. No.

Q. There was only one set of books and records?

A. Only one set.

Q. And, that's the Buckeye Tailoring?

A. That's right.

Q. Did American Mill Tailors have any bank accounts?

A. No.

Q. Was there only one bank account?

A. Just one bank account.

Q. So that these were only names?

A. That's right.

[fol. 731] Q. In connection with the trade name, Jacobson Tailors, how was that used?

A. Jacobson Tailoring Company was merely used between us and a finishing plant in Cincinnati.

Q. In other words, no sales?

A. No sales went on through that.

Q. When you had work finished—let's explain that a moment. When you had work finished by a finishing plant, it was sent out to the finishing plant under the name of Jacobson Tailoring Company?

A. That's right.

Q. Now, were there any sales in any of those transactions?

A. No sales whatsoever. The name was used in sending garments to the finishing plant to be finished.

Q. Was there a reason for that?

A. Yes.

Q. Give us the reason?

A. Usually these finishing plants that I sent garments to were our competitors. And Buckeye Tailoring Company having been known as one of their competitors, it would be rather unusual for them to go to work at a time like that when it was rather difficult to get tailors and so on, and make garments for us. Therefore, I just used another name to send to the finishing plants.

Q. What do finishing plants do?

A. They finish the garments.

Q. What do you mean by finish the garments?

[fol. 732] A. Well, the coat is all ready. For instance, in the coat shop the coat is already cut and trimmed, and then they finish it up and send it back to us all completed.

Q. Now, Mr. Friedberg, what did your business—I will call it Buckeye Tailoring, I mean, of course, retail and

wholesale and everything—what did your business consist of? What did you do in that business?

A. What did I do? Just make that a little more—

Q. Did you sell something?

A. Oh, yes, we sold, of course. Originally we started out as a pants matching place and we are still known as a pants matching place, and we still make suits.

Q. You sell clothing, do you?

A. Clothing.

Q. In your retail business in the years that are involved here and in particular 1945, '46 and '47, did you have one or two kinds of retail transactions, classes, I mean?

A. There was two kinds: the regular made to measure suits, and then, of course, there were the ready made or the uncalled for suits.

Q. Now, in order that we may get some of this terminology down where we can be talking about the same thing, let me just ask this question of you, Mr. Friedberg. When you refer to wholesale sales, what kind of sales are they?

A. Well, wholesale sales are this. For instance, we have dealers in and out of town. A tailor would sometimes send his own material in and we would cut it, trim it, send the coat to the coat shop, the pants to the pants shop, they [fols. 733-734] would finish it up and send it back to us.

We also had what we call a tailor-to-trade, where we furnish samples to these dealers, or they may have samples from another woolen house. They would send us the number of that cloth, they would either procure the cloth from the woolen house or we would use our own cloth. We would cut it and trim it with our own trimmings, send it to the coat shop, send the pants to the pants shop, the finishing plant, what I call, and they would return it to us complete.

Q. All right, then, the wholesale transactions are transactions between you and dealers?

A. That's right.

Q. And, these transactions are called tailored-to-trade—

A. Tailored-to-trade.

Q. —where the woollens are furnished by you?

A. That's right.

Q. And, they are called in this business cut, make and trim, where the dealers furnish the woollens?

A. That's it.

Q. Now, from the time you have operated this business at 180 South Third Street, did you do any of the finishing yourself, or was that—

A. Not a single garment ~~was~~ finished at our place.

Q. Now, was that finished always by independent shops?

A. Definitely.

[fol. 735] Q. Now, is it the sewing process or the finishing process that you refer to as having been done by these independent or outside finishing shops?

A. That's right.

Q. And, they receive from you the cloth which is already cut out according to the measurements that have been furnished?

A. That's right.

Q. And the trimmings, lining, things like that?

A. That's right.

[fol. 736] Q. And, they sew them up?

A. Finish them up, yes.

Q. When the garment comes back to you it is a finished suit?

A. It is already finished.

Q. Ready to be used?

A. That's right.

Q. In the retail transactions, what two kinds of transactions did you have in the operation of this business in the years involved?

A. Well, we have had what we call made-to-measure suits, garments where a man would come in, we take his measurements, and we would put it through the same process as the wholesale.

Q. Now, that's a transaction in which a suit is tailored to a customer's specific measurements?

A. That's right.

Q. Now, in that kind of a retail transaction who would take the measurements?

A. I would take it, or sometimes—I would take the measurements.

Q. You or somebody in your place?

A. Or somebody in the place.

Q. And, then the customer would pick out his cloth from where; from samples?

A. Either from sample for from stock.

Q. Did you have some woolens in stock?

A. Oh, yes, we had.

Q. And, then from that point on, the finishing was the [fol. 737] same as in the wholesale transaction?

A. Went through the same procedure.

Q. Now, who cut the garment out in the retail made-to-measure, tailored-to-measure suit?

A. The cutter.

Q. And, would the garment with the trimmings be sent on to the finishing shop?

A. Exactly so.

Q. Sewed up and returned?

A. That's right.

Q. Were there any other kinds of retail transactions?

A. Oh, yes, there was the ready-made garments.

Q. They were not made to a customer's specific measurements?

A. No.

Q. And the customers who purchased those would be the same as walking in a clothing store? The suits are hanging there.

Col. Windom: I object on two grounds. One, the question is immaterial. Secondly, practically every question is leading.

Mr. Sillman: Well, we are just getting some basic preliminaries, as the basis for—

The Court: Go ahead.

Q. Now, was there any other source of income from this business besides the wholesale business and the tailored-to-trade, made-to-measure suits, and the ready-made suits? Was there any other source of income?

A. Yes, there was some small repairs and cleaning, press-[fols. 738-740] ing. That was minor.

Q. Was the cleaning and pressing done on the premises?

A. Oh, no. That was sent out and a finishing plant would take care of the cleaning and pressing and return them complete.

Q. Was that a very substantial part of the business?

A. No, very small, very slight.

[fol. 741] Q. Were they entered in detail in the cash journal?

A. Yes.

Q. And, did you have any wholesale invoices?

A. Yes.

Q. And is that where the wholesale sales were entered?

A. That's right.

Q. And the made-to-measure or tailored-to-measure transactions, where were they entered?

A. They were also entered in the order book.

Q. What do you call that; a customer's order book?

A. Yes.

Q. Were those transactions entered in any other records?

A. No.

Q. How about the cash receipts journal, were they entered there?

A. Oh, yes, everything was entered there.

Q. Then they were entered in another record?

A. Oh, sure, cash.

Q. The ready-made sales, were they entered in detail in the cash journal?

A. No, that was entered in bulk.

Q. You heard Mrs. Friedberg testify as to how she handled that?

A. Yes.

Q. And, how about the other miscellaneous income such as cleaning, pressing?

[fol. 742] A. That was also handled in the same manner.

Q. In bulk?

A. Yes.

Q. Now, in order that we may get some of these terms together, I will ask the stenographer to mark this Exhibit 3.

(Defendant's Exhibit 3 was marked for purposes of identification.)

Q. I will ask you to identify that schedule and tell us if that correctly states the types of transactions that you had and the records in which they were recorded?

The Court: Is this exhibit in evidence?

Mr. Sillman: I am going to offer it.

Q. Does that contain a summary of where these various records are?

A. That's right.

Mr. Sillman: I offer Defendant's Exhibit 3 in evidence.

The Court: Is there objection.

Col. Windom: There is.

The Court: May I see it? Has it been properly identified or authenticated?

The objection will have to be sustained at this time due to the fact that it has not been properly authenticated or identified as an exhibit.

Mr. Sillman: May I be heard, if it please the Court?

The Court: What is it?

[fol. 743] Mr. Sillman: Well, we are going to be talking—

The Court: Let us find out from the witness what it is. Unless there is further identification or authentication the Court will have to sustain the objection.

Mr. Sillman: It is a summary of the terms that are used; just a summary. He has testified to wholesale sales.

The Court: When? At what time? What period? The objection will be sustained at this time.

Mr. Sillman: I see what you mean.

By Mr. Sillman:

Q. Now, Mr. Friedberg, will you look at Exhibit 3, and let me ask you this question. Does that contain a summary list of all of the sources of income, transactions had by you, during the years '44, '45, '46 and '47?

A. That's right. You are referring to paragraph 3?

Q. I am referring to Exhibit 3, we call it, the paper you have in front of you.

A. Yes.

Q. And, does it have a summary statement of the records which you have in which these various transactions were recorded?

A. Yes.

Q. Now, No. 1 appears the word wholesale sales. To whom were those sales made?

A. They were sales to dealers.

Q. And, in what records were they kept during the years?

Col. Windom: I object.

[fol. 744] Q. You testified, Mr. Friedberg, that the ready-made business was developed by you toward the end of 1945?

A. That's right, started about that time.

Q. Did this ready-made suit business also continue in the year of '46?

A. Oh, yes.

Q. How about '47?

[fol. 745] A. Definitely, yes.

Q. To give us some idea of the extent of that business, how many garments did you have on hand at the end of '47? Have you made any examination of your records to determine?

A. Well, we had, I would say, about 150.

Q. Did you have any at the beginning of 1945?

A. No, hardly, because we just started to develop it about that time.

Q. In other words, the business was started in '45?

A. That's right.

Q. And got under way, as you say, by the end of '45?

A. That's right.

Q. In the years of '44, '45, '46 and '47, starting with the year of '44, can you name the employees who were working for you?

A. '44, '45, '46 and '47?

Q. Let's take '44 first.

A. There was Miss Connell. She was Miss Connell; that's Mrs. Appl. She was Miss Connell at the time.

Q. Now, the lady who testified here, Mrs. Appl, that's her maiden name, Connell. She is one and the same person?

A. Yes, she was the bookkeeper.

Q. Who else?

A. Mr. Goodman was the bushelman, as I explained his duties. Mr. West was the cutter for the biggest portion, I believe, in '44, and myself.

[fol. 746] Q. How about '45?

A. In '45 Mrs. Friedberg took care of the books.

Q. And she replaced whom?

A. Mrs. Appl.

Q. Who else was employed?

A. Mr. Weiss, our former cutter in the old company, and Mr. Goodman, and myself.

Q. And, how about '46?

A. In '46 Mrs. Friedberg took care of the books and Mr. West was the cutter. He returned. And, Mr. Goodman was the bushelman, and myself.

Q. And, now, '47?

A. In '47 it is the same as '46.

Q. Did Mr. Goodman, the bushelman or tailor, do any alterations?

A. Well, repair work, yes. He did a little repair work and alterations on, of course, the suits that would come sometimes from a dealer, and his duties were various at that time.

Q. Did he make up any garments?

A. Yes, he made skirts. He made all the skirts.

Q. What years were skirts made by him?

A. What?

Q. In what years did he make skirts?

A. Well, he made them during '44, '45, '46 and '47.

Q. And, do you have any recollection about how many skirts were made up by him and under what circumstances they were made up?

[fol. 747] A. Well, of course, realizing that he had to take care of the fittings and the store, sometimes measuring a man, making alterations for dealers who return, why, he didn't have too much time to put on it. I just don't recall. Maybe he turned out 40, 50 skirts a year.

Q. And, have you examined your records to determine about how many those were?

A. Oh, yes.

Q. It would run around 40 or 50 in a year?

A. About that.

Q. Now, aside from the skirts, were there any other exceptions, anything else, made up by you or your employees?

A. No, that's all. You mean finished garments?

Q. Yes.

A. No. All the garments were made in the outside finishing plants.

Q. In the year of '47, do you recall whether you had any finishing work done, then, by anyone by the name of Weber?

A. Yes.

Q. Now, who was Mr. Weber? What did he operate or run?

A. He ran his own independent shop. We let him have space in the back of his store, and he run his own independent shop.

Q. And, that was in what year?

A. That was in the latter part of '47, I think, he started.

Q. Did he rent any space from you in the years '44, '45, '46?

A. No.

Q. Just in '47?

[fol. 748] A. That's right.

Q. What kind of a business did Mr. Weber operate?

A. Just a contracting, coat shop.

Q. Well, is that what you call a finishing shop?

A. That's a finishing shop.

Q. What part of the premises did he occupy?

A. The rear of the store.

Q. And, did you have him make up any garments for you during the year of '47?

A. In '47, yes, he made some.

Q. Did he make up any for you in any prior years?

A. No.

Q. Now, aside from Mr. Weber, where were the other finishing shops located?

A. We had Cincinnati, Mt. Healthy, and Fort Wayne, Indiana.

Q. And during the years of '45, '46 and '47, who was the principal coat shop?

A. That was Forney Tailors in Cincinnati.

Q. Located where?

A. In Cincinnati.

Q. And, who was the principal pants finisher?

A. That was Leo Dirr in Mount Healthy, Ohio.

Q. And, have you had any other finishing shops to sew pants?

A. No.

Q. Leo Dirr?

[fol. 749] A. He took care of all of them.

Q. Now, then, aside from Forney Tailors of Cincinnati, a coat shop, were there any other finishing shops that you dealt with during the years I have just referred to?

A. Yes.

Q. Name the others?

A. There was——

Q. How about T and T. Does that refresh——

A. Yes, T & T Tailors at Fort Wayne.

Q. Where were they?

A. They were in Fort Wayne, yes.

Q. How about a Nick's Coat Shop?

A. Yes. That Nick's Coat Shop was in Cincinnati.

Q. How about Fechheimer in Cincinnati. Do you recall that?

A. That's right.

Q. Did you have anyone make up any vests at any time?

A. Well, there were a few vests made by Deckman.

Q. Where was Deckman?

A. Cincinnati.

Q. What year were those made in?

A. Usually in '47, I believe.

Q. Were the vests just parts of suits?

A. Yes, oh, sure.

Q. Now, to get some idea of the extent of your operation, I will ask you whether you have examined your records, and [fol. 750] on the basis of your records and your independent recollection, and you may refresh it in a moment——

Mr. Sillman: Mark this Defendant's Exhibit 4.

(Defendant's Exhibit 4 was marked for purposes of identification.)

Q. You can refresh your recollection. Please tell us how many coats Forney Tailors made up for you in 1945?

A. 293.

Col. Windom: I object. Who made this? May I cross examine.

Mr. Sillman: Let me ask him. I will develop it myself.

Q. To whom did you furnish the figures that are on the

schedule from which you are refreshing your recollection?

A. These figures were furnished by the accountants to yourself.

Q. Which accountants?

A. Keller, Kirschner, Martin.

Q. And, did you examine your books and records to determine these figures?

A. Absolutely.

Q. And, how did you pay the finishing shops?

A. By checks.

Q. And, did you pay them in any other way?

A. No.

Q. Are the cancelled checks by which you paid the finishing shops for their services available?

[fols. 751-752] A. Oh, yes, they should be there.

Q. They are here in the court room?

A. Yes, right here.

[fol. 753] Q. Now, let me ask you something further along that line. Did you make any effort to verify these figures from the original records of the companies that you did finishing work with?

A. Yes, sir.

Q. Did you make any trips to Mount Healthy?

A. Made trips to Cincinnati, to Mount Healthy.

Q. I asked you first about Mount Healthy.

A. Yes.

Q. And, did you go to Leo Dirr's shop there?

A. That's right.

Q. And, in whose presence did you go there?

A. In your presence.

Q. And, at whose suggestion did you go there?

A. Your suggestion.

Q. And, what did you see when you were there?

A. Comparing the records.

[fol. 754] Q. Whose records did you see?

A. Mr. Dirr's record.

Q. And, did you compare them?

A. Absolutely.

Q. And, did you go to Forney Tailors?

A. Yes.

Q. And, did you make comparisons there?

A. Same procedure.

Q. Did you go to Fetchheimer's?

A. I did.

Q. And, at whose suggestion did you go there?

A. Your suggestion.

Q. And, what did you examine when you went to Fetchheimer's?

A. Well, the vice president himself——

Q. That's all right, never mind. What did you examine?

A. What's that?

Q. What did you examine at Fetchheimer's?

A. Their own records.

Q. Whose records?

A. Fetchheimer's records.

Q. And, you made that comparison, checked their records?

A. Yes, sir.

Col. Windom: Now, may I ask, in further cross examination as to this paper. Why, if your books and records are accurate, was it necessary to make that verification?

[fols. 755-756] The Witness: Well, I will tell you, Mr. Windom, I wasn't satisfied with my own records. I wanted to make sure that they would be right, and they were accurate when we made the comparison.

By Mr. Sillman:

Q. And, did anyone make any suggestion to you to go there?

A. Yes, you did.

[fol. 757] Q. What was the total number of coats produced in the years '45, '46 and '47?

A. 4,008.

Q. And, what is the total number of the pants produced in 1945, 1946 and 1947?

A. 5,184.

Q. Now, aside from the small number of skirts that you have already testified to that Mr. Goodman made, were [fol. 758] any other garments made for you other than the ones that you have just testified to, and also the few vests that you referred to?

I will rephrase that. Aside from the skirts that you testified to Mr. Goodman made for you, and some vests which were part of suits——

A. Yes.

Q. ——were any other garments made by you?

A. No.

Q. Other than those that you have testified to?

A. No, not a single garment.

Q. And, all of them made by outside sewing shops?

A. That's right.

Q. Did you ever, during these years, deal with any sewing shop other than those which you have testified to?

A. No.

Q. No other person?

A. No other shop.

Q. And, of course, you didn't make any on the premises?

A. Certainly not.

Q. When we say make on the premises, you have already testified that Weber rented space, and you have now testified he made 434 coats in '47?

A. That's right.

Q. State whether or not Weber was paid as any other finishing shop?

A. Same manner, by check.

[fol. 759] Q. And finishing shops make a charge, do they, for the labor or for anything else besides labor?

A. No, just labor.

Q. They furnish nothing but labor?

A. Nothing else but labor.

Q. As you have indicated, the garments are cut and just ready to be sewed up?

A. That's right.

[fol. 760] Q. On your totals, give us the year by year totals, how many coats were made in 1945?

A. 832 coats made in 1945.

Q. How many pants?

A. 1,178.

Q. How many coats were made in '46?

A. 1,640.

Q. How many pants were made in '46?

A. 2,134.

[fol. 761] Q. How many coats were made in 1947?

A. 1,536.

Q. And, how many pants were made in 1947?

A. 1,872.

Q. I wanted to just ask one further question. When you referred to examining the third party records, did you mean that you personally examined them?

A. Yes.

Q. The payments that were made to these finishing shops—are all of those checks available?

A. Yes, they are right here, right here in the court room.

Q. Have those checks been made available to the Government agents?

A. I believe they were.

Q. Did they ever ask for them?

A. Well, yes, they asked for them. They asked for all the records.

Q. Did you withhold any records from them?

A. No, none whatsoever.

Q. Now, Mr. Friedberg, did you have any source of income other than this business in the years of '44, '45, '46 and '47?

A. No.

Q. There has been some reference to the addition of interest to bank accounts. Do you know whether any interest was added to bank accounts?

A. Interest?

Q. Yes.

[fol. 762] A. I don't understand.

Q. Just a credit, a bookkeeping credit; savings account, I mean.

A. No.

Q. Well, that in fact is done by the banks.

A. What?

Q. That in fact is done by banks; interest is automatically credited.

A. Any interest—well, if there was any interest, naturally it would be added into it, certainly.

Q. Would that be in any substantial amount?

A. No.

Q. Were you engaged in any other kind of a business other than this business?

A. No.

Q. This tailoring business?

A. That's all.

Q. There has been some testimony about an account at Vercoe, I think around \$2,000, approximately \$2,000, \$1,900. Have you engaged in any stock transactions in the years in question other than those reflected by the Vercoe Company account?

A. No.

Q. Then is it a fact, Mr. Friedberg, that you had no other source of income?

A. No other source.

Q. Your place of business is located where with reference [fol. 763] to the bus station?

A. Well, it is right—well, it is a rather obscure place. It is right—well, you would call it either the rear of the bus station or on the side of the bus station.

Q. On which side of Third Street is your place of business?

A. On the east side.

Q. South Third?

A. Yes.

Q. And, the bus station is on what side of Third?

A. That's on Town and Third, right on the corner, and the main entrance faces Town Street.

Q. So, the side of the bus station is on the opposite of Third Street?

A. That's right.

Q. And, what businesses in Columbus do you consider yourself generally to be competing with?

Col. Windom: I object to that.

The Court: What do you claim for this?

Mr. Sillman: Oh, I want to indicate the character of the business.

The Court: Objection sustained.

Q. Now, Mr. Friedberg, if all of your income came from this business, what part of the income came from the sale of garments as contrasted to the cleaning and pressing?

A. Well, cleaning and pressing was very insignificant.
[fol. 764] Q. Let me ask this question. In the years of '45, for example, '46 and '47, how much would that business amount to?

A. The cleaning and pressing?

Q. Yes.

A. Well, including repairs?

Q. Yes.

A. Repairs, cleaning—

Q. All of that miscellaneous income.

A. Oh, I would say—in a year?

Q. Yes.

A. I would say it would average about \$500 to a \$1000.

Q. And, have you had your accountants make a study of your records to determine the amount with more accuracy than you have?

A. Oh, yes, yes.

Q. So that it represented the miscellaneous income—the miscellaneous income represented an insignificant part of your total income?

A. Yes.

Q. The rest of it, then, came from wholesale business, did it?

A. That's right.

Q. And, from the sale of garments?

A. Yes.

Q. And, in this business, take these better grade tailored to measure suits, what price range did you sell at in the years of '45, '46 and '47?

A. Well, they would run anywhere from about—

[fol. 765] Q. That's made to measure.

A. Yes. The made to measure would run from \$29.50 or \$27.50.

Q. You are going back to '45?

A. Run about from \$27.50 to, I would say, about \$62 to \$67.50.

Q. And, were there some garments sold at higher than the \$62 or \$67 figure?

A. Yes, there was a few garments sold. Not very many over that period of years.

Q. What's the highest priced garment that you sold?

A. Well, those garments we sold, say, for \$72.50, and I don't believe there must have been more than a dozen or fifteen of those suits sold over the entire period, and those were of materials, well, materials that I would say are comparable to Forstman woolens, if you know what that is.

Q. No, I don't.

A. Well, Forstman woolens—I am saying that for the benefit of the women in the jury, because they, I think, are familiar with that name.

Q. What is Forstman woolens?

A. It is very fine woolens made exclusively for fine tailors, ladies tailoring, and then there was a Kilmanic, which was a name coined by a Forest Woolen Company.

Q. That represented what class?

A. \$72.50. They were expressly asked by the customer.

Q. The ready made suit business that you began to develop toward the end of '45, during the years '45, '46 and '47, what was the price range on those ready made suits? [fol. 766] A. Ready made, uncalled for, and so on?

Q. That's right.

A. The ones that were already made?

Q. That's right, not made to measure.

A. Well, those that we had already for sale, they were in a cheaper category, and we made those up because there is a demand for a quick turnover, a quick sale, for a quick suit to put on.

Q. What was the price range?

A. I would say—the average price?

Q. Yes.

A. The average price would run around \$32, \$33.

Q. What was the lowest price at which you sold these ready made suits during that period?

A. Oh, there were some we would be glad to get rid of for \$25.00.

Q. What you would sell them for?

A. Around \$25.

Q. And, what's the highest price you got for ready made suits during this period?

A. There were some we got as high as \$40.

Q. Mr. Friedberg, during these years in question, '45, '46 and '47, did you have window displays?

A. Oh, yes, we always had window displays.

Q. And, what would you display in the window?

A. Woolens, yard goods.

[fol. 767] Q. Was it your practice to have window cards?

A. Oh, yes, we had price tags on our materials.

Q. Do you have any window cards from those years?

A. Yes, I kept them.

Mr. Sillman: Mark these Defendant's Exhibit 5.

(Defendant's Exhibit 5-A to 5-P were marked for identification.)

Q. I am handing you a series of exhibits here, marked 5-A to 5-P, and first of all, tell us what those exhibits are, Mr. Friedberg?

A. Well, this represents a pair of——

Q. Now, what are they, first? I will ask you what's on them.

A. Well, these are price tags that represent the price of either pants or suits made to order in the window there that we had on yard goods.

Q. Where would you place those price tags?

A. I would hang them right on the goods, on the material represented.

Q. On a ready made suit or on a bolt of cloth?

A. On a bolt of cloth.

Q. And, for what years were those price tags used?

A. During '45, '46 and '47.

Q. Now, I will ask you a further question. Were those price tags all tailored to measure price tags?

A. All tailored to measure. No ready made, because we didn't exhibit those.

Q. You have no ready made price tags in the group you [fol. 768] are now holding?

A. No, these are all hung on regular materials made to measure.

Q. Did you at any time put price tags on ready made, on the cheaper grade clothing?

A. No.

Q. Now, then, confining yourself to the Exhibit 5, Series 5, I want you to read to the jury the prices that you exhibited merchandise for.

Col. Windom: I object.

The Court: What does this have to do with the case?

Mr. Sillman: If it please the Court, we are attempting to establish here that this is a small operation, a very small operation with a very limited number of employees, which didn't make anything on the premises but had it all sewed out at other shops, and which sold a very cheap type of merchandise. This is a basis from the testimony of the operator of the shop, who is the only one who can give it, from which our accountants will later demonstrate, we believe, conclusively, that it would be absolutely physically impossible for the income to have been made as claimed by the Government.

The Court: But, what bearing, Mr. Sillman, will these price tags have on the income. He has testified to all these facts. Now for what purpose are the price tags intended to be introduced: as primary evidence of the prices charged, or for illustrative purposes?

Mr. Sillman: I would like to answer that. In presenting this case we have at all times and shall produce every bit [fol. 769] of evidence that we can, corroborative and otherwise, and while he has already testified to prices, we should like to introduce in evidence the actual physical price tags to corroborate his statement as to the low prices at which he was selling garments.

The Court: Is it proper to fortify the testimony of your own witness?

Mr. Sillman: I would say this, Your Honor. If there was a book or record which had the specific prices, year by year, which a small business wouldn't keep, then that record would be the proper evidence, but the price tags which a man has in his window is the best evidence of the price at which he sells garments.

The Court: He can testify to all those facts. These price tags would not in and of themselves be evidence of what he actually sold. The Court is not foreclosing you from presenting evidence, but the Court is of the opinion that you are merely attempting to fortify the testimony of your own witness by these price tags. At this time the Court will have to exclude them.

Mr. Sillman: Now, without offering them as an exhibit,

may I ask this question, and don't answer until the Court rules. May I ask Mr. Friedberg to tell whether he did in fact sell made to measure garments at prices to which he will testify from these cards?

The Court: I think the witness has already testified as to the prices of the various garments which he sold. Now, if you want to ask him again, the Court will permit you to do so, but I think the witness has told the price range which he charged for ready made garments and for other garments [fol. 770] which were custom tailored. If he has not, the Court will permit him to do so.

Col. Windom: May I state another angle? Your Honor has about 75 per cent of my objection. These prices are the come-on to bring people in. The order book—

The Court: They are out.

Col. Windom: The order book and cash book are the best evidence.

The Court: Why are you arguing about something which is not in. The Court sustained your objection. If the witness has not answered, he may do so, but the Court had the impression he had answered.

Mr. Sillman: Your Honor has been extremely fair. He has answered the price range. You did not misunderstand. I am merely attempting to fortify that testimony. If it is ruled out, that is all right.

The Court: I see no necessity of repetition.

By Mr. Sillman:

Q. Concerning the income that you derived, Mr. Friedberg, from such miscellaneous sources as cleaning, pressing, repairing in the years '44, '45, '46 and '47, I will ask you to state whether that income was or was not carried into your income tax returns for the respective years?

A. Why, yes, it was carried in.

Q. Now, Mr. Friedberg, there has been some testimony by the agents about the insufficiency and the inadequacy of [fol. 771] your books, and I am going to ask you to introduce or rather to identify for us the various books and records that you had, and I am going to ask you to indicate to us the books and records that you made available to

the agents. This will relate, of course, to the years in question, '44, '45, '46.

And, if I may say to the Court, we have a list of these, and it may save time if the stenographer will mark these exhibits later.

The Court: Can you gentlemen agree as to the introduction of these exhibits?

Col. Windom: I will check with Mr. Clager.

The Court: I think we will adjourn for lunch and let you gentlemen work that out during the luncheon period. Perhaps we might save time by doing that. If you will check with the U. S. Attorney——

Mr. Sillman: These have all been available to them.

The Court: You may be able to introduce them by agreement.

Ladies and gentlemen of the jury, the Court intends to take a recess until two o'clock. You will return at that time. You must follow the instructions given you by the Court at all times.

(The jury retires.)

The Court: I want to suggest to counsel, the Court desires counsel to present by ten o'clock tomorrow morning any special requests which you may have.

Mr. Sillman: We shall be glad to comply.

[fol. 772] THURSDAY AFTERNOON SESSION

January 3, 1952

DAVID FRIEDBERG, resuming the stand, testified further as follows:

Direct examination (Cont'd.).

By Mr. Sillman:

Q. Mr. Friedberg, I am going to hand you a series of records and I will ask you to identify them.

The Court: Are you able to agree as to these records?

Mr. Sillman: I think so.

The Court: Is there any reason why you cannot stipulate as to the authenticity and identity?

Col. Windom: I have a list. Why not state it.

Mr. Sillman: If the Court will bear with me, there will be a little confusion in the chronological order of numbers because one of the books has already been marked Exhibit 2, and I don't want to change the numbers unless the Court wants them changed.

The Court: Is it in evidence?

Mr. Sillman: Witnesses have testified from it but it was not offered in evidence yet. Here is what we have. We are going to offer them now. Our last exhibit number, according to my record, was No. 5, which was the series of price tags. We propose to offer in evidence Exhibit No. 6, which is a cash receipts journal, the defendant's cash receipts journal, covering the period from December 4, 1943 to April 19, 1944, being one of the records which [fol. 773] were turned over to the agents.

The Court: Is there objection?

Col. Windom: There will be no objection to any of these exhibits.

Mr. Sillman: Then we offer next what would be Exhibit No. 7, which is the cash receipts journal for the period from April 20, 1944 to November 16, 1944. There is no objection to that, as I understand.

Then we offer next the exhibit which has already been marked Exhibit 2, but it picks up from there that last date from November '44 on through '47, or to December 22, 1947.

Next, we offer in evidence Defendant's Exhibit 8, which is a series of retail order book pages, which we refer to as retail order book, containing part of prior years but continuing in to the first part of 1944. Now, this starts December 28, 1942. Of course, we have no relevancy to the early dates, but it happens to be the group in which the January '44 appears on the last page, so we just offer that as the part of '44.

The next would be Exhibit No. 9, which is a continuation from the previous exhibit and goes on through '44. The

dates will speak for themselves, but that is a retail order book.

Exhibit 10 will be the next retail order book in chronological order from where the preceding one left off, '45.

Exhibit 11 is the next chronological order book which picks up from where the preceding exhibit left off, and contains '46.

Exhibit No. 12 is the next order book from where the preceding one left off, and it goes on to '47.

[fol. 774] In other words, these exhibits which we now offer, which are numbered 8 to 12, are the order books, the retail order books covering various periods during the years '44 through '47. Any objection to those?

Col. Windom: No objection.

The Court: The Court understands there is no objection to any of these exhibits as identified and offered.

Col. Windom: That is correct.

The Court: They will be admitted.

(Defendant's Exhibits 6, 7, 2, 8, 9, 10, 11 and 12 were offered and admitted in evidence.)

Mr. Sillman: We offer in evidence Defendant's Exhibits 13, 14 and 15, being the carbon copies of the sales invoices covering wholesale sales during the years '45, '46, and '47 respectively.

The Court: Is there objection?

Col. Windom: No, sir.

The Court: They will be admitted.

(Defendant's Exhibits 13, 14 and 15 were offered and admitted in evidence.)

Mr. Sillman: Your Honor, we offer Defendant's Exhibits 16, 17, 18 and 19, which are purchase invoices. They are loose in boxes, but the exhibits are marked as a whole. The purchase invoices for the purchases of woolens and supplies for the years of '44, '45, '46 and '47.

The Court: Is there objection?

[fol. 775] Col. Windom: No, sir.

The Court: They will be admitted.

(Government's Exhibits 16, 17, 18 and 19 were offered and admitted in evidence.)

Mr. Sillman: Next we offer in evidence Defendant's Exhibits 20, 21 and 22, which are carton boxes containing the cancelled checks of the defendant, the Buckeye Tailoring Company, separated month by month, and each box containing the year, and the years involved being '45, '46 and '47. That is, each year is separated by month, and in the year of '47—the exhibit which is marked 22—in addition to the cancelled checks are the check stubs for the year involved.

The Court: Is there objection?

Col. Windom: No, sir.

The Court: They will be admitted.

(Government's Exhibits 20, 21 and 22 were offered and admitted in evidence.)

Mr. Sillman: I think that's all we will offer at this time in the form of exhibits. And, we had not offered Exhibit 2 formerly. We do so now. That's the '44-'47 cash journal.

The Court: Is there objection?

Col. Windom: No, sir.

The Court: It will be admitted.

Mr. Sillman: I presume we ought to offer Exhibit 1, [fol. 776] which has nothing to do with the Defendant's records. We had it marked. It was a certified copy, certified by the Treasury Department.

The Court: Is there objection?

Col. Windom: No, sir.

The Court: It will be admitted.

(Defendant's Exhibit 1 was offered and admitted in evidence.)

By Mr. Sillman:

Q. Mr. Friedberg, since you have those exhibits in your possession, which are Government's Exhibits 3 (a), (b), (c) and (d), I will ask you who prepared the income tax work sheets which are in these exhibits for the years of '44, '45, '46 and '47?

A. I did.

Q. Take a look at them, run through them all. In whose handwriting are they?

A. You mean the work sheets?

Q. Yes.

A. Mine.

Q. And, those which are typed were prepared by whom?

A. The typed copies?

Q. Yes. The figures that were furnished, anything there that was typed or that was handwritten, who furnished them?

A. I furnished these.

Q. Now, that which is written, is that written in your handwriting?

A. Yes.

[fol. 777] Q. Any of the figures that are in writing, in pencil?

A. Yes.

Q. And any of the figures that are furnished on a typed statement, was that prepared by you?

A. Yes.

Q. And, to whom did you furnish those income tax work sheets?

A. To Mr. Weiss.

Q. And, Mr. Weiss was who?

A. He is a certified public accountant at 8 East Long Street.

Q. He is the man who was on the stand earlier in this trial?

A. Yes.

Q. Was he employed by you as your accountant?

A. He was employed in former years as our accountant.

Q. Why did you give him the income tax work sheets?

A. Because he was formerly our accountant and was familiar with our work, and I considered him a capable man.

Q. What I am asking is, did you employ Mr. Weiss to prepare your income tax returns for the years of '44, '45, '46 and '47?

A. I did.

Q. And, where did he get the figures to prepare them?

A. I furnished them.

Q. And, are those the figures that we are talking about?

A. These are the figures.

Q. So that you gave those figures to Mr. Weiss for the

purpose of having him prepare your income tax return?
[fol. 778] A. That's right, precisely.

Q. Concerning the records that were available and to which you have just referred, or rather that I introduced without objection, are those all of the records available for the years in question, '44, '45, '46 and '47?

A. We have records here.

Q. No. I am talking about these years.

A. These are all the records that I have.

Q. I am through with the work sheets. You can give that back to the young lady. I am now talking about your records that have been introduced in evidence without objection.

A. OK.

Q. Covering the years '44, '45, '46 and '47.

A. Yes.

Q. Do you have available any other records for those years?

A. No, I don't.

Q. That's what I am asking. Now, concerning your available records, did you make those records available to the agents?

A. Oh, yes.

Q. Did you also make them available to your accountants, Mr. Weiss and Mr. Forsythe?

A. Yes.

Q. In the testimony that was offered earlier there was reference to items entered in the cash receipts journal designated Buckeye checks. Will you explain to the jury what those items were? They appear throughout your cash receipts journal for the years in question.

[fol. 779] A. They are checks from our dealers.

Q. Buckeye checks?

A. Yes, Buckeye Tailoring checks.

Q. No, you haven't understood me. Checks that are designated Buckeye checks written by the Buckeye Tailoring Company?

A. Oh, they are in payment of invoices and labor and all expenses.

Q. You still don't understand me, I am sorry. Now, be patient. There has been some testimony about checks which

Mrs. Friedberg, and I think Mrs. Appl, referred to as Buckeye checks. I am not talking about all your cancelled checks here. I don't mean those. But, the entries in your cash book designated Buckeye checks or Buckeye accommodation, in which checks were drawn to the account of the Buckeye Tailoring Company. Can you explain what those were?

A. Well, you mean, for instance, an accommodation check for Buckeye Tailoring Company?

Q. That's right.

A. Well, for instance, we would have a rent check for the house, why, we would put in whatever the amount would, \$65 or \$75, or whatever the amount would be, and draw a check for it.

Q. Now, Mrs. Appl testified that you at times asked her to draw those checks, and she actually did the physical writing while she was there?

A. Yes.

Q. And, when Mrs. Appl left did you or did Mrs. Friedberg write out the accommodation checks?

A. Mrs. Friedberg did.

[fol. 780] Q. Now, what is the fact about whether or not cash was put in the cash drawer to equal the amount of those checks?

A. Well, for the amount of the check.

Q. Was that or was it not done?

A. What's that?

Q. Did you or didn't you do that?

A. Yes, we did. We put in an amount equal to whatever the check designated.

Q. Now, if you will pick up those exhibits again, please, and if you will turn to your income tax work sheet for the year of '47.

A. Yes.

Q. And, look in the left hand corner. That's the yellow paper there.

A. In the left hand corner?

Q. In the upper corner. "Loans repaid." Can you find it?

A. I can't find it.

Q. Maybe my eyes are younger. Right here in the left hand corner. Can you see it from there?

A. Yes, I can see it now.

Q. Is that in your handwriting?

A. That's in my handwriting.

Q. And, was that in the form in which it now is when you furnished it to your accountant, Mr. Weiss?

A. That's right.

Q. And, what does that item represent, what is the [fol. 781] amount of it, by the way?

A. It is \$5380.

Q. And, what is it designated, what have you got written on there?

A. Loans Repaid.

Q. And, what does that item represent?

A. Well, that item represents loans, money that had been advanced during the former period, say, '45 and '46 and part of '47.

Q. Were any earlier years included?

A. I don't think so. I think it was mostly '45 and '46. There may have been some from '44, I don't recall.

Q. You heard Mrs. Friedberg testify that she kept track of the money that she advanced to the business?

A. That's right.

Q. Did you rely upon her to do that?

A. Yes.

Q. Did you keep any separate track of it, or did you just let her do that?

A. She kept track of that.

Q. How much total gross income did you show on that work sheet before the loans repaid?

A. The gross income was \$75,084.

Q. How is that?

A. \$75,084.90, to be exact.

Q. When you furnished that figure to Mr. Weiss, the gross income, where did you get the gross income figure?

[fol. 782] A. Well, Mrs. Friedberg gave me that from the cash book.

Q. That's the total amount appearing in the cash book?

A. That's right.

Q. And, did you at the time you prepared that work sheet think that you had a right—did you believe that you had a right to deduct loans which were repaid?

A. Without question.

Q. You still feel that way?

A. Why certainly.

Q. At the time you furnished the work sheet to Mr. Weiss, your accountant, did Mr. Weiss question you about the year in which those loans were made?

A. No.

Q. He asked you no questions?

A. No, he didn't ask me any questions.

Q. Do you recall when that return was filed? Do you have any recollection of that?

A. Well, usually take it up there about the last—about a couple days or day before the last day of filing.

Q. You have no record or precise memory?

A. No, but I am fairly sure, reasonably sure, that it was about a day or two before filing.

Q. And, was that filing date January 15 or March 15?

A. I think January 15.

Q. That would be '48, of course?

[fol. 783] A. Yes.

Q. When did the investigation of your income tax begin, Mr. Friedberg?

A. Why, that was in—well, now the investigation—the first time Mr. Curtis came into our store?

Q. Yes, that would be the first knowledge you have.

A. That was in September of 1947, about that time.

Q. I beg your pardon?

A. I think it was around the 20th.

Q. After the investigation started did you have Mr. Weiss make an audit of your books and records and income tax for the year of 1947?

A. No, he didn't make an audit. He was going to make an audit.

Q. Did he later on make one?

A. Yes.

Q. And, did he make the audit after the investigation started?

A. No, it was after the investigation started.

Q. It was?

A. Yes.

Q. Did Mr. Weiss, in the course of that detailed audit, then discuss with you the question of this Loans Repaid item of \$5300?

A. Well, yes, he did. He asked me about it.

Q. Did Mr. Weiss indicate to you that that was not properly deductible?

A. Yes, he did say that.

Q. For the year '47?

[fol. 784] A. He told me I shouldn't have made it

Q. Shouldn't have made it or deducted it?

A. Deducted it.

Q. Do you understand now whether you should or shouldn't have?

A. I am still under the impression it was due us and it was deductible.

Q. Merely the repayment of a loan?

A. Yes.

Q. There has been some testimony by Mr. Clager, and I think by Mrs. Friedberg, too, concerning some items in 1944 which there were repayments of \$2800 and \$3600. Do you know what those repayments were for?

A. Yes, that was for merchandise that I bought on the outside market.

Q. Where did you get the money for those?

A. Mrs. Friedberg gave me that.

Q. Where did you get the other money that was advanced to the business from time to time?

A. Mrs. Friedberg gave it to me.

Q. And, what did you use the 1944 advances for, if you recall?

A. That was for purchase of some woollens and some trimmings.

Q. Do you recall where you made those purchases?

A. Yes, I made those in New York.

Q. How many trips did you make?

A. I made three trips.

[fol. 785] Q. Was merchandise available in that period?

A. It was very difficult to get. We were allocated.

Q. Did any salesmen call on you during that period?

A. No.

Q. You said woolens were allocated?

A. Yes. Also trimmings and so forth.

Q. So that you went to New York to buy what you couldn't buy here?

A. That's right.

Q. These repayments which were made, the '44 items and the '47 items, were they paid by cash or were they paid by checks drawn on the Buckeye Tailoring Company account?

A. They were paid by check.

Q. In other words, you made and retained a record of the repayment through your checks?

A. Absolutely.

Q. You didn't repay those prior loans by just taking off cash?

A. Oh, no, no, those were made by check.

Q. Checks were actually written out?

A. Written out for those loans.

Q. To whom were the checks written?

A. They were written to Mrs. Friedberg.

Q. To Mrs. Friedberg?

A. I believe so.

Q. Well, if they weren't written to her, to whom else would they be written?

[fol. 786] A. Could have been written to me.

Q. Do you know whether any of those checks were written in direct payment for a purchase of a bolt or anything of that kind, to refresh your recollection?

A. That I don't recall.

Q. Well, at any rate, however the checks were made, if you don't recall the detail of it, the repayment was made by checks? You are positive that the payments were made in a recorded form of a check?

A. That's right.

Q. And not by cash?

A. No.

Q. There has been some testimony and comment, Mr. Friedberg, and an exhibit offered here, in which there is a statement of cash made in connection with a loan. It is Exhibit 7, I am told. Will you look at that, Mr. Friedberg?

I have a little difficulty myself.

A. Personal financial statement.

Q. Did you make that statement?

A. Yes, I made this statement.

Q. What is the first line there concerning the amount of \$150. What is printed on there, and the question?

A. It says, "On hand."

Q. Read it all. Read the number and all.

A. "On hand, \$150.00."

Q. Is that all it says?

A. Do you want the next line?

[fol. 787] Q. I want what that line says.

A. It says "Bank accounts."

Q. That's it. Mr. Friedberg, this Personal Financial Statement—that's the language printed—the line designated "Property owned" has under it printed "Bank accounts", and then there is filled in by typewriter the words "On hand" and the sum of \$150. Did you make that statement?

A. Yes.

Q. Did you have a bank account of \$150?

A. I may have had at the time.

Q. Then the next line is printed "(2) Other savings" and in parentheses under the blank space is printed the words "Name of depository." Do you know whether you had any other bank accounts at that time, October 1939?

A. No.

Q. Do you recall whether you did or didn't?

A. I don't recall whether I had any.

Q. Then there appears the printed word "Investments", and "Marketable securities," and there is filled in there, "Household Goods, Auto, Life Insurance" and various items. Did you have those items, the ones that you filled in here that you said you had?

A. Yes, whatever is filled in there.

Q. Incidentally, up here in "Savings" you filled in "Cashier's Check with National Life Insurance Company, \$2000." Did you have a cashier's check in that amount?

A. Yes.

[fol. 788] Q. In other words, Mr. Friedberg, without going into the details of each one of these lines, state

whether or not you did or did not have at least what you filled in on this return?

A. Yes, what was on that return I had.

Q. Now, what is the fact as to whether you had more than was filled in there. Did you have more; either you or Mrs. Friedberg?

A. Why, certainly.

Q. And, will you explain to the jury why you gave the amounts that were asked there?

A. Well, I felt that that was sufficient to justify the loan that I was making application for, inasmuch as the house had that representation.

Q. You were not overstating?

A. No, definitely not.

Q. Now, have you been able to find any place on that printed questionnaire where it asks whether you have any money in the safe box, or whether you have any money at home?

A. No, there was nothing asked or nothing on that blank.

Q. Did you feel it was your duty to volunteer that information?

Col. Windom: I object.

The Court: Yes. We are not concerned with how he felt. Sustained.

Q. Did you volunteer information which was not asked of you?

Col. Windom: I object. That is leading.

The Court: Let him tell what he did, Mr. Sillman.

Q. Let me ask you whether you added anything that [fol. 789] wasn't on the questionnaire?

A. No.

Q. You said that you were first contacted by Mr. Curtis.

A. That's right.

Q. In connection with your income tax investigation?

A. Yes.

Q. Who did Mr. Curtis represent himself to be when he contacted you?

A. He represented himself to be from the Revenue Department.

Q. Do you know whether he is with the Department now?

A. I don't think he is.

Q. Now, that was in September of 1947?

A. 1947.

Q. And, what did Mr. Curtis do when he first came to see you?

A. He came in and he showed his credentials.

Q. What do you mean showed his credentials?

A. He had some kind of a badge or something. I just don't recall what it was. He said he was from the Internal Revenue Department, wanted to talk to me about a '42 return. I think it was '42 or '43. I just don't recall exactly which one it was.

Q. Pardon me. This conversation was in 1947?

A. Right.

Q. And, he was asking you about something in '42?

A. That's right.

Q. Where did it take? I would like to fix that.

[fol. 790] A. In the store.

Q. In your place of business?

A. In my place of business.

Q. Will you please continue. What did he ask you, if you remember?

A. He asked me why I filed a short form, and I replied that I thought it was proper because I was under the impression that anyone making, say, under \$5000 a year it was permissible to file a short form.

Q. Was there anything else that you recall that he asked at that time, or were his questions merely routine? If you recall anything you may testify to it.

A. No, he asked me, he said, "You state on this return that you only employ two or three people." I don't remember just at that time. He said, "I see in the rear of your store that you employ many more. Were you telling an untruth there?"

I told him, "Now, if you will investigation and if you want to go back, you will find that that has no connection with our business at all."

Q. And, that was in the year of '47 when Mr. Weber was renting space from you?

A. That's right.

Q. And, the employees that he was talking about, the people were whose employees?

A. In Mr. Weber's employ.

Q. And, how long was Mr. Weber there altogether, for how long a period?

[fol. 791] A. He was there from, oh, I should say about a year and a half altogether, beginning around '47, the early part of '47 and up until the end of '48.

Q. Did Mr. Curtis come back?

A. Yes, he sat around, talked a while.

Q. Anything special?

A. Nothing really special, and he said that he was in the course of moving and he wouldn't have time to be around. I would expect to see him in about a week or ten days.

Q. Now, incidentally, when you said he questioned you about the number of employees, he wasn't questioning you about the 1942 return, then, was he?

A. Oh, no. Well, he questioned me about the 1942 return, yes, and the 1942 return had designated that I had two or three employees.

Q. Now, go ahead. He came back when?

A. Came back on October 25, I think it was.

Q. Wasn't he there on an earlier date, October 10?

A. That's right, October 10. It was September 25 that he came in the first time.

Q. Now, I want your own recollection. Is the incident to which you are now going to testify the one when you went to the box?

A. That's right.

Q. Do you recall that now as October 10?

A. Yes, October 10.

Q. Who was with him at the time he came in, if anyone?

[fol. 792] A. He came in by himself.

Q. What did he ask you, then?

A. Well, he asked me whether I had the records together. I said, "You can avail yourself of any records you want. Just ask me whatever you want about it."

Q. Well, did you subsequently make the records available to him?

A. Oh, yes, we got all the records together.

Q. When he wanted them?

A. Yes.

Q. Was there any conversation about whether you had a safe box, Mr. Friedberg, either you or Mrs. Friedberg?

A. Yes. He said, "Before we go any further, there is a little routine questioning that I would like to talk about." And he came in and sat down at Mrs. Friedberg's desk there and I was sitting near the phone, right near by, and he started off, I believe, asking me my name and where I was born, and finally drifted off into "Do you have any bonds?" I said, yes. He says, "Where do you keep them?"

"In the vault, in the lock box."

He says, "Well, it is my duty to inform you that you are not to go down until we see what you have in there."

Q. What did you answer to that?

A. He continued on. I didn't answer. He saw me sitting at the phone and perhaps thought I was going to call.

Q. Not what he thought. You can't testify to that. Just what you said.

[fol. 793] A. And, he said, "I would advise you," he says, "not to call your attorney because he will only make a sucker out of you."

Q. Go ahead.

A. I said, "Mr. Curtis," I says, "I have no intention of calling my attorney." I says, "If that is the procedure of the Government, you can come down to my lock box right now."

Q. What did he say to that?

A. Well, he called up a deputy there.

Q. Was that Mr. Nerny?

A. Mr. Nerny.

Q. Did Mr. Nerny come over to your place?

A. Yes.

Q. And, where did you take them?

A. Well, at that time Mrs. Friedberg came in.

Q. I ask you, where did you take Mr. Curtis and Mr. Nerny?

A. Down to the vault.

Q. And, what vault did you take them to?

A. Down to the Market Exchange Bank.

Q. And, is that where you had your safe deposit box, you and Mrs. Friedberg?

A. Yes.

Q. And, is that the same box that's been referred to here very frequently in the name of F. F. Handler and D. F. Handler?

A. That's right.

Q. What other names were on that box; that is, what [fol. 794] other persons had authority to enter the box?

A. Elaine Friedberg.

Q. And, in what name?

A. Elaine Friedberg.

Q. And, did any other person have authority to enter that box?

A. Wayne Friedberg.

Q. Their names all were signed?

A. They are all on the card.

Q. When you took the agents to the box, did they have an opportunity to examine the contents of the box?

A. Yes.

Q. And, where did that take place, where did you take the box to examine the contents?

A. Well, I took the box into one of the large rooms there.

Q. Who went with you?

A. Mr. Nerny and Mr. Curtis.

Q. Now, when the three of you were present, is that when the agents examined the contents of the box?

A. That's right.

Q. That's on October 10 when Mr. Curtis came back for the second time?

A. Yes.

Q. Did you enter that box between the time that Mr. Curtis first came to see you and the time when you took them right on the spot down to the box?

[fol. 795] A. No.

Q. Now, you testified that Mr. Curtis called Mr. Nerny?

A. That's right.

Q. Where did he call him from?

A. Right from the office there.

Q. From your place of business?

A. Right from our place of business.

Q. Did you leave your place of business for a moment

while Mr. Curtis was waiting for Mr. Nerny, or did you wait for him?

A. I waited.

Q. And, as soon as Mr. Nerny came, is that when you went to the box?

A. Exactly. Went right down there.

Q. Now, prior to that time, that is, between that time that you took them down to this box, F. F. Handler and D. F. Handler and Wayne Friedberg and Elaine Friedberg, had you entered that box at any time from the time Mr. Curtis first came to see you in September—

A. Yes.

Q. —up to October 10, when you took him and Nerny there?

A. No, sir.

Q. You had no occasion to enter the box?

A. No occasion to go.

Q. And, you did not enter?

A. I did not go into it.

Q. Have you examined the card which must be signed in [fol. 796] order for a person to enter the box?

A. Yes.

Q. Can you tell me of your personal knowledge from that examination whether Mrs. Friedberg ever went into the box from the time that Mr. Curtis first came to see you up until the time you took the agents to the box?

A. No.

Q. Did she or did she not?

A. Never. She didn't go in there.

Q. Did Elaine Friedberg enter the box during that period?

A. No, sir.

Q. Did Wayne Friedberg enter the box?

A. No.

Q. Now, state to the jury whether or not anything of any kind, character or description was removed from that box from September, when you knew you were under investigation, up until the time you took the agents there?

A. No, I did not.

Q. Did Mr. Curtis even know you had a box?

A. No, he did not.

Q. He asked you, didn't he?

A. He asked me.

Q. Did he know that the box was under the name of Handler?

A. No, he did not, until I showed it to him on the card.

Q. Did he ask you about savings bank accounts?

A. Oh, yes.

[fol. 797] Q. And, did you tell him about your savings bank accounts?

A. Yes.

Q. Did you include the savings bank account or two, whichever it may be, that was in the name of Handler?

A. Everything. We exposed everything we had to him.

Q. Did you show any bank books that you had?

A. Every bank book that we had he knew about. We showed it to him.

Q. Whether the account was still open or not?

A. Yes.

Q. And, did those bank books include an account or two that was under the name of Handler?

A. That's right.

Q. Did he know about that?

A. Yes.

Q. Did he know about it before you showed it to him?

A. No, he didn't know anything about it.

Q. Now, did he ask you any questions about whether you had any brokerage accounts?

A. Yes.

Q. Did you tell him?

A. Sure.

Q. And, what account was that?

A. The Vercoe account.

Q. And, whose name was that account in?

[fol. 798] A. That was in A. Wayne Friedberg.

Q. Was that a large account, by the way?

A. No, it wasn't very large.

Q. Just about how much was it?

A. At that particular time I can't say just what it was.

Q. According to the net worth statement, that starts out at 1947, and the copy that we have the lines run off. Would you please give me the '47 figure?

Mr. Clager: \$4700.

Q. A D & H bond is shown. You are familiar with that?

A. Yes, Delaware and Hudson bond.

Q. And that was in approximately what amount?

A. It was a \$5000 bond, and I believe was furnished for \$4300 or \$4400.

Q. Now, the point is, was that bond purchased before the agents commenced their investigation and went into your box, or was it purchased at some later date?

A. It was during that time. It was in the course of their investigation.

Q. Was it after or before they went to the box?

A. After.

Q. So that that wasn't involved in any brokerage account—

A. No.

Q. —at the time?

A. No.

[fol. 799] Q. Now, this brokerage account which is shown here at \$1900 something in earlier years in the name of Wayne, explain to the jury what that was?

A. Well, at that time I figured that I would start some kind of an investment for Wayne. It was a small purchase; it wasn't so very much. However, later, on it became an active account which I used and I didn't change the name. I kept it in the name of A. Wayne Friedberg and I kept it a little more active after that.

Q. What was your original purpose in opening up that small brokerage account?

A. Well, I wanted to start some kind of a savings fund or an investment for Wayne.

Q. For your son?

A. That's right.

Q. Now, did you tell the agent when he asked about the brokerage accounts that you had an account or that there was an account in the name of Wayne Friedberg?

A. Yes.

Q. Did he know that without your telling him?

A. No.

Q. Now, did Mr. Curtis ask you if he could have your books and records?

A. Yes, he did.

Q. And, just what did you do when he asked you that?

A. I helped him get them all together, whatever he [fol. 800] wanted. I says, "Avail yourself of anything you see here that you want." I got all the records and piled them up, and he asked me, "I have no way of getting these over to the Department."

I says, "Well, I have my car handy." I says, "I will take you over there with the records."

Q. So that you helped Mr. Curtis get together all of the records and you put them in your automobile?

A. That's right.

Q. And, you drove over to the department?

A. At this building right here.

Q. And helped him carry the records in, is that correct?

A. That's right.

Q. And, the records that we are talking about, are those the records which are now in evidence?

A. Those are the records, yes.

Q. Did you ever at any time withhold any records from Mr. Curtis or any other agents?

A. Not at all.

Q. Did you ever at any time delay or attempt to delay turning over a record to an agent?

A. Nothing at all. It was available whenever they wanted it.

Q. Did you ever at any time make any changes in any of your records?

A. No. No occasion for it.

Q. Did Mr. Curtis ask you any questions about where [fol. 801] your funds came from or what you had or anything like that when he examined the box?

A. Yes.

Q. Did Mr. Nerny ask you any questions?

A. Yes.

Q. What did you tell him?

A. I told him that these represented our life savings.

Q. Now, at the time this cash was counted, and I am taking you back to October 10 when you and Mr. Curtis and Mr. Nerny were in this private room in the bank—

A. Yes.

Q. —where your bank vault was opened and they were examining the contents.

A. That's right.

Q. State whether or not either Mr. Curtis or Mr. Nerny or both handled the cash that was in that box?

A. Yes.

Q. Who did it?

A. Mr. Curtis started to count the money there. He apparently seemed very nervous, and Mr. Nerny got out of patience and took the money from him, and he says, "Now, I will count the money." And as he started to count the money he says, "Mr. Friedberg, we are going to take a slice of this." I told him, I says, "If anything is coming to you, you will get it."

Q. He told you they were going to take a slice of it at that time?

A. Yes.

[fol. 802] Q. And, that's the first time he had come to see you?

A. That's right.

Q. The first time you had ever seen him?

A. That's right.

Q. And, that was before Mr. Curtis had examined any of your books or records, or before he had asked for them, is that correct?

A. Yes, sir.

Q. I want to be sure.

A. Definitely.

Q. Before Mr. Curtis asked you for any books and records?

A. Yes.

Q. And, before you turned your books and records over to him?

A. That's right.

Q. So, it is before any agent could have possibly seen any of the books and records?

A. That's right.

Col. Windom: I object to your leading questions.

The Court: Sustained.

Q. Now, Mr. Friedberg, let's get back to some of your early history to which Mrs. Friedberg has testified.

The Court: At this time we will take a brief recess. Ladies and gentlemen, you will follow the instructions of the Court heretofore given you.

(A brief recess was taken.)

By Mr. Sillman:

[fol. 803] Q. Mr. Friedberg, what part of New York did you live in when you were first married?

A. Why, over on the east side.

Q. Is there a name for that part of New York, a common name?

A. Well, they call it the Ghetto.

Q. Is it a rich neighborhood or a poor neighborhood?

A. Well, it is very poor.

Q. And, you have testified and Mrs. Friedberg has testified that after about two years you moved to Dayton, Ohio?

A. That's right.

Q. Why did you move to Dayton?

A. Well, we wanted to get away from that squalor and tenement house district and all that privacy that existed over there. We felt we would better ourselves if we would come out there.

Q. And, when you moved to Dayton, were you employed by yourself or were you employed by somebody else?

A. No, I started what they call a Consumers Merchandise Company in Dayton.

Q. Do you have any recollection at all of what you made in that business, in those years?

A. Well, it is difficult to say just what I made, because when I disposed of my stock that I had, I received approximately \$1800 when I wound up the business there.

Q. Now, after you wound up the business, Mr. Friedberg, did you work for any companies?

[fol. 804] A. Yes, I went to work for the—I wound up the business for the purpose—I was expecting to be called, and wanting to wind up our business and get it off satisfactorily.

Q. Who did you go to work for?

A. I went to work for the Recording and Computing.

Q. Is that the name of a Company?

A. Yes, Recording and Computing Company.

Q. Do you know about what you made while you worked for them?

A. Oh, I would say in the neighborhood of about forty to sixty dollars a week.

Q. How long did you work for them, do you have any idea?

A. Well, it was later taken over by the Naval Ordnance Plant.

Q. But, while it was still called Recording and Computing Company, how long did you work there?

A. That I don't recall. I can give you the——

Q. After Recording and Computing Company, whom did you work for?

A. The Naval Ordnance Plant.

Q. They took over the Recording Computing?

A. Yes.

Q. That was operated by the Government, was it?

A. Yes.

Q. And, about how much did you make there, if you remember?

A. Well, that was the time I was the supervisor in the engineering department, and I was getting in the neighborhood of about, oh, I would say about fifty to sixty [fol. 805] dollars a week.

Q. And, did you work for any other people or companies while you were in Dayton?

A. Yes, after that I went to work for the American Mill Tailors.

Q. About how much did you make there?

A. Well, there the basic salary was \$50 and commissions; plus commissions.

Q. And, how much did you make?

A. Earnings went from \$50 to \$125.

Q. Where was this Buckeye Tailoring Company business started?

A. In Dayton.

Q. Was it started originally as a corporation?

A. No.

Q. How was it started first?

A. Started as a partnership.

Q. Who were your associates or partners in that business?

A. Mr. Cohen, Meyer Cohen, Nathan Weiss, and a Mr. Shafer and myself.

Q. And, then, did the partners form a corporation?

A. Yes.

Q. Was that while you were still in Dayton?

A. While we were in Dayton.

Q. And, where was the business moved to?

A. To Columbus.

Q. Did you come along?

[fol. 806] A. Yes.

Q. That was in about what year?

A. I would say about 1923.

Q. And, you have already testified that you have lived here ever since?

A. Yes.

Q. Mrs. Friedberg has, too?

A. Yes.

Q. Now, up to 1931, when this corporation was dissolved, were you employed any place else?

A. No.

Q. Only for the Buckeye Tailoring Company?

A. Buckeye Tailoring Company.

Q. That's the old corporation?

A. That's the old corporation.

Q. And, what were your earnings with the Buckeye Tailoring Corporation?

A. They ranged from \$50 to \$100.

Q. Were there some pretty good years in that business?

A. Well, the \$1500 were fringe years, but the biggest part of the time it was around \$75, I would say an average of \$75.

Q. Per what?

A. Per week.

Q. Mr. Friedberg, from the time you were first married, during the time you lived in New York and on through the time that you moved to Dayton and lived in Dayton, [fol. 807] and on through the time you moved to Columbus

and on up to the present time, who took care of the money in your firm?

A. Mrs. Friedberg.

Q. You have heard Mrs. Friedberg testify that through all those years you turned over your pay check or whatever it may have been, pay envelope, from time to time?

A. That's perfectly right.

Q. You heard her testify that she handled all of the financing, that is, she handled the money?

A. Yes, sir.

Q. How did you treat the money that she was saving?

A. How did I treat it?

Q. Yes.

A. Well——

Q. Whose money is it?

A. Well, I feel that it is savings that she saved and I think she is entitled to it.

Q. She has indicated that she treats it as her money because she saved it. Are you in accord on it?

A. I certainly am, 100 per cent.

Q. Now, you heard Mrs. Friedberg testify that she did the washing and ironing?

A. Everything.

Q. All those years?

A. Yes.

[fol. 808] Q. She said she made the children's clothing?

A. Yes, sir.

Q. Sewed her own clothing?

A. Yes.

Q. Of course, you got your suits where?

A. At the Buckeye Tailoring Company.

Q. You heard Mrs. Friedberg testify that you and she and the children didn't go on vacations?

A. No, we hardly——

Q. Spend any money for things like that?

A. Perfectly right.

Q. That you didn't have parties?

A. No parties, no gambling, nothing.

Q. You don't smoke or drink?

A. That's right.

Col. Windom: Are you asking whether he heard, or whether that is true.

Q. Is that a fact?

A. Yes.

Mr. Sillman: I am just trying to shortcut this testimony. I think I should ask this witness that.

Q. Did you engage in any real estate transactions after you came to Columbus?

A. I did.

Q. How soon after you came to Columbus?

[fol. 809] A. I would say about a year after.

Q. Did Mrs. Friedberg encourage those transactions?

A. No, she was very much against it.

Q. Did she take any active part in handling the details of those transactions?

A. Nothing whatsoever.

Q. Were they handled exclusively by you?

A. By me.

Q. Do you have any independent recollection of this long series of transactions that Mrs. Friedberg was cross examined on for about a day or a half? Do you have any independent recollection of the details of all those transactions yourself?

A. Reasonably.

Q. Do you have some recollection?

A. Yes, I have some recollections.

Q. Well, let's see what happened. Can you tell us where the first property was that you bought?

A. That was a wirecut brick duplex at 705 Bedford Place. It was a practically new building and it was one of the finest in the city at that time. The price was approximately \$20,000 and I paid that down to the first mortgage that was on it.

Q. That is to say, there was a first mortgage on it?

A. There was a first mortgage, but there was also a second mortgage.

Q. When you say paid it down, you mean that you didn't [fol. 810] pay the entire amount in cash?

A. No, not the entire amount in cash.

Q. Proceed.

A. I used the car——

Q. What car?

A. The Nash car. We bought a car in 1921, a Nash car, paid \$1650 in cash for it, and of course, at the time that I purchased it was considered a used car. The reason why I got rid of it was because we got the full value of what I paid for it.

Q. In this real estate transaction?

A. Yes.

Q. Did you buy a car after that?

A. No, not soon thereafter.

Q. Did you buy one in 1936, around that period?

A. Yes, in 1936.

Q. That was what kind of a car?

A. That was a Pontiac.

Q. Now, going back, what was the next piece of property that you owned, if you recall?

A. That was on 700 Kimball Place.

Q. Where was the first one located?

A. At 705 Bedford Place.

Q. And, the next one was on?

A. 700 Kimball Place.

Q. 700 or 701?

[fol. 811] A. No, that is another place.

Q. What happened to the first property, the 705 Bedford?

A. I sold that to Ellis Snyder.

Q. Well, did you own two of them, or did you dispose of the Bedford and then acquire the Kimball?

A. No, I disposed of the Bedford and acquired the Kimball. I took that in clear.

Q. All right. Do you remember where the next property was?

A. Yes, at 701 Bedford.

Q. And, did that result from some trade-in, or did you still keep the Kimball?

A. No, I built that property.

Q. What about the Kimball property? Did you still have that?

A. No—I beg pardon?

Q. Well, if you can't remember, say so.

A. I think I still lived at Kimball Place at the time that I built this 701 Bedford Place. A single.

Q. Do you think you can remember the next property you purchased?

A. Yes.

Q. After 701 Bedford?

A. Now, when you say purchased.

Q. Well, acquired.

A. Acquired. That was on Sheldon Avenue, 494, 496.

Q. And, did you keep the 701 Bedford, or did you dispose of that?

A. Disposed of that.

[fol. 812] Q. After the Sheldon Avenue property what was the next property?

A. After the Sheldon Avenue property was 131 North Nelson Road.

Q. And, did you keep the Sheldon property or did you dispose of that?

A. Disposed of that.

Q. After the Nelson Road property what property did you acquire?

A. On Stanwood Road, 204 Stanwood Road in Bexley.

Q. Did you keep the Nelson Road property, or was that disposed of? Is that one that was foreclosed?

A. That was disposed of.

Q. Was that foreclosed?

A. That was foreclosed.

Q. All right, after the Stanwood Property, what was the next property?

A. 208 Stanwood Road.

Q. The first one was 204; the next was 208?

A. That's right.

Q. And, did you keep—when I say you, I mean you or Mrs. Friedberg—did you keep the 204 Stanwood Road?

A. No, I disposed of that.

Q. The next property?

A. 208.

Q. After that?

A. We lived in that for a while and we disposed of it.

Q. Anything else? Is that the last piece of real estate?

A. Oh, there is a lot that I have down on Riverside

Drive. That came in during the time of the—but that's unimproved.

[fol. 813] Q. Now, Mr. Friedberg, these real estate transactions go back to the early 1920's?

A. Yes.

Q. You said within about a year after you moved to Columbus?

A. That's right.

Q. So, that would make it around 1923 or 1924?

A. Right.

Q. That's twenty-five, twenty-six years ago. From your testimony, I take it that you disposed of one property and went on and acquired another?

A. That's right.

Q. In the transactions that you engaged in here, did you have any occasion to take back any mortgages in any of them?

A. Yes.

Q. That is, you would sell a property, I mean?

A. Well, yes, in several of the transactions there that I sold, I sold subject to a note that I had made. The party purchasing it or having made the deal or acquiring it collected some rents and let the property come back on my hands.

Q. Well, did you at any time take back cash in any of these transactions when a property was disposed of, cash or check?

A. Well, it would be in the form of second mortgages and some cash in some instances.

Q. And, did you collect any rents at any time from these properties?

A. Oh, yes.

Q. Throughout these various years?

[fol. 814] A. Yes, sir.

Q. Incidentally, where do you live now?

A. At 1350 Neil Avenue.

Q. Do you own that or do you rent?

A. No, I rent.

Q. And, before you lived at Neil Avenue where did you live?

A. (No response.)

Q. I will put it a different way. If you can't remember, there is no use—can you tell me approximately how long ago it's been that you owned real estate other than this little vacant lot that we are talking about?

A. I would say it's been about ten years.

Q. And whatever that date is, the last date, whichever the property was, 208 Stanwood or whatever the number was, have you ever owned a home since that time?

A. No.

Q. You didn't own a home in 1944?

A. No.

Q. You didn't own one in 1945?

A. No.

Q. 1946 and 1947, and don't own one now and haven't for many years?

A. No.

Q. Have you been living in rental property, paying rent?

A. Yes, some. Very few, though.

Q. I am talking about the last ten years.

[fol. 815] A. Oh, sure, the last ten years, rental property.

Q. You are living in rental property now, are you?

A. Yes.

Q. Now, in addition to the mortgage payments that were involved in these transactions—I mean mortgage payments received by you, the third mortgages—was there some interest collected?

A. Oh, sure.

Q. And, was there some rentals collected?

A. Yes.

Q. And, was there some interest paid by you to mortgage companies?

A. Yes, there was some interest paid.

Q. In other words, if you took a property and had a mortgage on it, you paid—

A. That's right.

Q. In any of these transactions where cash was required, where did you get the money?

A. Mrs. Friedberg let me have it.

Q. You said that she did not encourage these transactions.

A. No, but she knew that I was very much in favor of it

and she didn't encourage it because she saw how some of the property was going and she didn't feel favorable toward it.

Q. Now, Mr. Friedberg, going back over these numerous transactions, these real estate transactions, could you give us an estimate of approximately how much you received [fol. 816] from those transactions over those years?

A. Well, including interest on——

Q. I mean interest payments that you received on mortgages, rents, things of that kind.

A. I would say, conservatively, about fifteen to twenty thousand dollars.

Q. You heard Mrs. Friedberg testify about safe deposit boxes. What is your recollection on whether you did or didn't have safe deposit boxes during the time you were in Columbus?

A. It is my impression we always had a safe deposit box.

Q. Did you have safe deposit box when you were in Dayton?

A. Yes.

Q. Did you keep something valuable in there?

A. Yes.

Q. What did you keep in those boxes?

A. Well, she usually kept her cash in there, some cash, and whatever it was, some bonds.

Q. Mrs. Friedberg testified about buying a cedar chest when you moved to Columbus back in '22 that she says you still have.

A. That's right.

Q. Are you familiar with that cedar chest?

A. Yes, I am.

Q. And, was anything valuable kept in that cedar chest?

A. Yes.

Q. In these past years?

[fol. 817] A. Yes.

Q. Money?

A. Yes.

Q. Cash?

A. Absolutely.

Q. Mr. Friedberg, did you during any of these years,

at the time know approximately what you were worth, how much you had?

A. Oh, at certain times, yes, sir.

Q. Are you able to give us any recollection now about how much you had in any particular year?

A. Well, I have some idea what we had when we came to Columbus, and I would say that it was in the neighborhood of around \$25,000.

Q. Can you tell me how much you had in 1925, in 1937, in 1941?

A. Well——

Q. In 1922?

A. Well, in 1936 I recall——

Q. Now, just answer my one question. Are you able to or not?

A. No, I am not.

Q. I take it that what you mean is that you have no independent recollection as to any year?

A. No.

Q. Now, during a particular year did you then, at that time, know approximately what Mrs. Friedberg had?

A. Yes, I remember.

Q. How did you know at that time?

[fol. 818] A. Well, in 1936——

Q. No, I am not talking about 1936. I am talking about in any year, 1923, 1927, 1929?

A. I did not know.

Q. At that time did you know?

A. About what?

Q. About what you had?

A. I had an idea. I never knew exactly.

Q. How did you have an idea? Who kept track of it?

A. Mrs. Friedberg kept track of it.

Q. How did you know about it at the time?

A. Well, the only way that I knew was just by figuring from certain times. When I did know, I just made an approximation.

Q. Now, do you recall the approximate time when the Government changed the size of the currency; that is, from the big sized bills to the small sized bills? I am not talking

about denominations, I am talking about the size of the bills. The big bills they used to have.

A. It was during—I don't know, I think it was in the years of '49 or '30 or '31, in there about.

Q. Do you have any recollection of handling any cash for Mrs. Friedberg in those days, exchanges?

A. Yes.

Q. What was done?

A. I used to go in and have it just exchanged for the regular size, the new currency.

[fol. 819] Q. The new size?

A. Yes.

Q. And, where would you go?

A. Go to most any bank.

Q. Where would you go?

A. Well, I would go to—I would go into the City National, I would go into the Huntington National.

Q. Did you ever take any money with you on out-of-town trips?

A. Yes.

Q. Did Mrs. Friedberg ever exchange any of the money?

A. Yes, she did.

Q. Now, Mr. Friedberg, I want you to search your memory as to any specific incidents that might have occurred from which you would have an idea as to whether you did or didn't have substantial money, and I am calling your attention now to an incident which occurred in the year of 1938 in connection with your account. Do you recall any financial transaction that was then discussed?

A. Yes.

Q. Now, pardon me, who was your accountant?

A. Mr. Weiss.

Q. Is that Mr. Henry Weiss?

A. Mr. Henry Weiss.

Q. And, that's the gentleman who was here and the one whom we have indicated we are going to call as our witness?

A. That's right.

[fol. 820] Q. He is the one who prepared your returns?

A. Yes.

Q. In 1938 was Mr. Weiss the Buckeye Tailoring Corporation's accountant?

A. That's right, yes.

Q. And, had he been for a number of years?

A. Yes, for quite a number of years.

Q. And, was he the accountant for the corporation up to the time—thereafter?

A. After that.

Q. Was he?

A. Yes.

Q. Now, in 1938 what did you discuss with Mr. Weiss concerning finances?

A. The way the business was going I wasn't particularly satisfied with it, and I thought at the time we should do something about getting the business on a larger scale.

Q. What do you mean by getting the business on a larger scale?

A. Well, we were going to *go* into the tailored to-trade business in a large way.

Q. Who was interested in doing that?

A. I was interested in doing that.

Q. How about your associates? Mr. Weiss was one of your associates?

A. That's right.

[fol. 821] Q. I don't want to be confused, or anybody else, because the names sound alike. Mr. Weiss, your partner, is not Mr. Weiss, your accountant?

A. No.

Q. The names are spelled almost alike. Now, your associate, Mr. Weiss, was he interested in investing additional money?

A. He seemed to indicate he wanted to invest but he made no specific—didn't conclude that he wanted to.

Q. Was Mr. Cohen interested in investing additional funds?

A. No.

Q. What did you discuss with the accountant?

A. It was a question of whether we were going to continue on with Mr. Cohen at the time.

Q. You were thinking of getting rid of him?

A. Yes. And, I talked to Mr. Weiss and told him that the only way—the cutrate business was sort of dwindling out and tailors as a rule were not inclined to carry very

much materials. Therefore, it was necessary, in order to go into the tailored-to-trade business, it was necessary to handle quite a big stock of woolens in order to keep the tailors supplied, and if you put out lines you have to have an adequate supply.

Q. Mr. Friedberg, I just want to interrupt a moment, if you please. The Buckeye Tailoring Company, the corporation, was a finishing shop?

A. Yes.

Q. It wasn't engaged in the same kind of business you later engaged in?

A. No, that was a complete finishing shop, cutting, trim-[fol. 822] ming and making—

Q. When you said talking about tailor-to-trade, you were talking about sales of merchandise where woolens would be required?

A. That's right.

Q. Now, go ahead.

A. Now, that would require a considerable investment.

Q. What did Mr. Weiss say to you?

A. We discussed at some length there what it would require, and I told him it would take around fifty to sixty thousand to have just a substantial amount of dealers, to be able to support a substantial amount of dealers.

Q. Were you seeking financial advice from Mr. Weiss, the accountant?

A. Well, in a way, yes.

Q. Did he do any figuring to get his idea of what might be required?

A. Yes, we just figured up about what it would take to do it, the amount of styles it would take, how many bolts it would take to do it.

Q. Now, go on with your conversation.

A. Well, at that time, since the condition wasn't peaceful among us—

Q. Peaceful among whom?

A. That is, among the partners of the old corporation, Mr. Weiss, Mr. Meyer Cohen, and so forth, he thought it best not to say anything about it in the meantime and not divulge anything about what my intentions were, to let it alone for a while.

Q. Did Mr. Weiss discuss with you whether you had discussed the matter with your partners, whether they were then willing to put money up?

A. Oh, yes.

Q. And, did you tell him whether they were or weren't?

A. I told him.

Q. Did you tell him that Mr. Cohen was or wasn't willing?

A. Yes.

Q. That Mr. Cohen was willing to put money up?

A. No, no, he wasn't.

Q. Did you tell him that Mr. Weiss, your other partner, was willing to put money up?

A. Well, he was, but he was reluctant.

Q. Did you and Mr. Weiss, the accountant, have any discussion about you personally putting up money?

A. Yes.

Q. How much money was discussed, after these computations and figuring that you went on with, with Mr. Weiss?

A. Fifty to sixty thousand dollars.

Q. And, was that a discussion between you and Mr. Weiss about how much you were to put up?

A. Yes, oh, yes.

Q. Did you ask Mr. Weiss' advice on whether you should put that up?

A. Yes, I did.

Q. And, what advice did you receive?

A. Well, he said to just let it dormant for a while.

Q. Did you put the money up or did you follow that advice?

[fol. 824] A. No, I did not.

Q. Now, Mr. Friedberg, if you were then discussing personally putting up to \$60,000 in 1938 with your accountant—

A. Yes.

Q. —did you have that much money to put up?

A. We had far in excess of that.

Q. And this discussion in which you were trying to figure out how much money it would take to start this new venture—

A. Yes.

Q. —with woolens and different lines of business, did Mr. Weiss ask you personally if you could put this money up?

A. He didn't ask me personally. He took it for granted that I could when I told him.

Q. Did you talk to him in terms of you personally making that investment?

A. Oh, yes, sure. He understood that I would do that, that I intended to do it.

Q. I am asking you whether, after your initial discussions relating to whether you and the other partners would put up that amount, if there was a discussion between you and Mr. Weiss about you putting up that total amount? What advice did Mr. Weiss give you in case you put up the money alone, not your other partners with you?

A. Well, I just don't remember exactly.

Q. Did he mention anything about this—

Col. Windom: I object.

[fol. 825] Mr. Sillman: Just to refresh his recollection.

The Court: What does this have to do with the case? What is the materiality of it?

Mr. Sillman: If it please the Court, where a person claims he has substantial funds and he has had a conversation in these years with the accountant concerning an investment which he was ready, willing and able to put up, it certainly is strong corroborative evidence, and we expect that evidence to be borne out from the lips of the accountant himself that the defendant in this case did have the substantial cash that he spoke about having and testified to.

The Court: The Court is not foreclosing you from showing that, but you are entering into a field of speculation and conjecture as to business ventures in that time, are you not?

Mr. Sillman: Your Honor is entirely correct so far as the business venture is concerned. But, Judge, this is our position. Mr. Friedberg has testified and Mrs. Friedberg has testified that they have saved every penny from the time they were married and they didn't advertise it and they kept it hidden in a box and so forth. Now, there are no records of that money, and if this case goes to the jury

with no other evidence than the testimony from their lips, it is not the same case where third parties will testify to what they had. We expect to call the accountant and have him testify.

The Court: You may do so. But, you are asking this witness what the accountant said, and so forth, his advice on business matters and business ventures. The Court is not foreclosing you insofar as Mr. Weiss is concerned. [fol. 826] Mr. Sillman: We figured it was necessary.

The Court: It seems to the Court you are over in a speculative and conjectural field of evidence as to business transactions prior to the time charged in this indictment.

Mr. Sillman: We merely felt that we should lay the foundation because we fully expect Mr. Weiss to testify.

The Court: You may interrogate him insofar as laying the foundation is concerned, but the Court is inclined to think you are probably far afield on some of your other questions.

Mr. Sillman: Very well.

Q. Now, without going into any detail of the business venture—Your Honor is absolutely right; that is not important—just what the business purposes were or how you were to expand, state whether or not you did discuss with Mr. Weiss the proposition of you personally putting up all of this money?

A. Yes.

Col. Windom: I object to that question as leading.

Mr. Sillman: I don't know how else to get to it.

The Court: Let him tell what they discussed. Your question is leading and suggestive, Mr. Sillman. The objection is sustained.

Q. Now, I take it, Mr. Friedberg, that neither you—well, I will ask you. Did you or Mrs. Friedberg ever make a practice of advertising how much your saving were?

Col. Windom: I object.

[fol. 827] The Court: Sustained.

Q. Did you make a practice of going around telling people how much you had?

Col. Windom: I object.

The Court: Sustained.

Q. And where you had it?

The Court: We are not concerned with practices. We are concerned with what they actually did, if anything.

Q. Did you go around telling your neighbors and friends how much you had in the safety deposit box?

A. No, sir.

Q. Did you go around telling your neighbors and friends how much cash you had at home?

A. Certainly not.

Col. Windom: I object. That question is leading.

The Court: Let him tell what he told his friends without you suggesting what he told them. Let the witness do the testifying, Mr. Sillman. You are not a witness.

Q. Now, going back to any other incidents—do you know Mr. Arthur Hall?

A. Yes.

Q. Who is Mr. Arthur Hall?

A. He is an insurance broker.

Q. And, where is his business located?

A. In Columbus.

[fol. S28] Q. Did you know him back in 1942 or '43, '41?

A. Yes.

Q. Back in those years?

A. Yes.

Q. Have you ever done business with him?

A. Yes.

Q. Did you ever seek Mr. Hall's advice on any investments?

A. Yes, I did.

Q. State what that was and when. When, first.

A. It was during 1942. We were deciding—trying to figure out how we would invest the cash that we had. I called Mr. Hall. I wanted to talk to him. He came down to the place.

Q. Came down to what place?

A. Down to the office. Came down to the store there at the office, and I told him that I was interested in an annuity insurance, and I told him that I wanted to invest about \$50,000 in an annuity.

Q. Did you have some understanding of what an annuity investment was? You needn't go into details. Did you have some understanding?

A. I had some.

Q. Now, did you ask Mr. Hall's advice?

A. Yes.

Q. And, in his advice, did his explanation of the annuity coincide with your own understanding?

A. Not entirely.

Q. Did he advise you to buy or invest the \$50,000?
[fol. 829] A. No.

Col. Windom: I object.

The Court: Sustained.

Q. What was his advice to you?

A. He suggested that I do not invest it.

Q. And, did he give you any reason?

A. No, not particularly, but I was under the impression that an annuity was one where you made an investment, you bought \$50,000 worth of insurance and that you would — well, you had your insurance you would be getting your interest and you could arrange a repayment of that monthly, and then when the party was deceased, why, he would get the balance. And, he said that wasn't it at all.

Q. Now, Mr. Friedberg, that financial conversation with Mr. Hall, you say, took place around in '42?

A. In '42.

Q. How soon was that after you had started up this new business?

A. Well, it was about—Oh, I say about a year.

Q. Now, I want to ask you this, Mr. Friedberg. When you sought Mr. Hall's advice on the propriety of investing \$50,000 in an annuity, did you have the money at that time?

A. Why, certainly.

Q. Was that all the money you had?

A. Oh, no, no, that was just part of it.

Q. Do you recall whether you discussed with Mrs. Friedberg the investments that we have just talked about?

[fol. 830] A. We discussed these things. On that particular item I don't think I talked to her about that.

Q. Were you seeking the information first?

A. That's right.

Q. Mr. Friedberg, there are two exhibits in evidence. One is certified by the Treasury Department concerning income tax returns or lack of returns going back to 1924, or whatever year it goes back, and the other is a statement which was revised during the court proceedings. One was offered by the Government and one by us. In connection with those prior years state whether or not you ever failed to file an income tax return if one was required from you or if you believed it was required from you?

Col. Windom: I object.

The Court: Why?

Col. Windom: On the basis of his statement. Maybe I am in error. What was revised during the course of trial.

The Court: Read the question.

(Question was read.)

The Court: The objection will have to be sustained.

Q. There are two exhibits, Mr. Friedberg, one which we offered and one which the Government offered. They contain or purport to contain information concerning your income tax returns in early years.

A. Yes.

Q. Now, for the period covered, which I think went back to 1924, I am asking you whether at any time you ever failed to file an income tax return if you believed that one was due from you?

[fol. 831] A. I don't recall.

Q. And, do you believe that if an income tax return was due from you, that you filed one?

A. Oh, yes.

Q. Did you ever, in any of those years, fail to report income if you believed it was subject to be reported?

A. I never failed to return.

Q. Did you ever fail to pay an income tax in any of those early years if an income tax was due from you?

A. No.

Q. Do you have any knowledge at all about the different exemptions that were allowed in the years of '22 or '24 or '27? Do you have any knowledge of that?

A. I don't recall just what it was, no.

Q. Do you know what the exemption was for a married person in 1923?

A. I believe it was somewhere in the neighborhood of \$2500.

Q. You don't claim to have any knowledge of that?

A. No, I don't.

Q. I am sure I don't. There has been some testimony and an exhibit admitted with our consent, relating to a small insurance loan, two of them, way back in 1931, about twenty years ago. The question I want to ask you relates to Exhibit 4 (a) and 4 (b), which was the State Mutual Life Assurance Company record showing a loan January 27, 1931 for \$250, and the record card showing an insurance loan September 15, 1931 for \$700. Now, concerning those insurance loans, Mr. Friedberg, what were they made for? [fol. 832] A. Well, so far as I can recall, Mrs. Friedberg always had some objection to my purchasing anything of a speculative nature. At that time there was something of interest that I wanted to buy and she definitely refused to let me have it.

Q. Do you remember what it was?

A. I don't recall. I can't recall. It may have been National City—I didn't buy anything. If I recall right, I made the loan with the intention of buying, with the first loan. It was some curb stock, and when I got the money I didn't invest it.

Q. What did you do with it?

A. Well, I just kept it, and I held on until I made a loan of another \$700. I think it was National City stock. I don't recall exactly but I think it was some stock, either Kroger or National City. I don't recall which it was. Those were repaid, if I recall. The Missus wouldn't even let me have the money to repay it, but they were repaid by the dividend, took care of that.

Q. Now, Mr. Friedberg, was that a situation in which you didn't want to ask Mrs. Friedberg for the money?

A. Well, yes, it could be. It is quite a while ago, but I know there was some difference there and some objections.

Q. Is there any question about Mrs. Friedberg having substantial money at that time?

A. No question about it.

Q. Now, in this series of real estate transactions, starting [fol. 833] with 705 Bedford and continued on to 208 Standwood, which one of those properties were under foreclosure? There were three foreclosure suits. I would just like to identify the properties which were under foreclosures.

A. Now, these foreclosure——

Q. Now, just a moment. Which one of the properties were under foreclosure?

A. 701 Bedford, 494 Sheldon and 131 North Nelson.

The Court: Now, Mr. Sillman, the Court intends to adjourn at this time until ten o'clock tomorrow.

(The usual instructions were given to the jury.)

(A recess was taken until ten o'clock a.m., January 4, 1952.)

FRIDAY MORNING SESSION

January 4, 1952

DAVID FRIEDBERG, resuming the stand, testified further as follows:

Direct examination (Cont'd.).

By Mr. Sillman:

Q. Mr. Friedberg, I think that at the close of yesterday's testimony I was just starting to ask you about the foreclosures. How many properties did you own that were under foreclosure?

A. Three.

Q. Can you recall which was the first?

A. The first one was on 494-496 Sheldon.

[fol. 834] Q. Do you know about when you acquired that property?

A. No, I don't recall that exactly.

Q. Would it refresh your memory if I suggested the year of 1928?

A. That would be about right.

Q. Does that sound about right to you?

A. Yes, that sounds about right.

Q. Do you know when you sold the property, disposed of it?

A. It must have been about two years later, I think. I just don't know.

Q. You got it around 1928 and sold it a few years later?

A. Yes.

Q. I think the record shows '29. Does that refresh your recollection?

A. 1928 it was purchased.

Q. And sold?

A. About 1929, is about right.

Q. Does that sound about right?

A. That sounds about right.

Q. Now, whom did you sell that property to?

A. To a party by the name of Musselman.

Q. Do you know when it was foreclosed?

A. Oh, quite a while after that.

Q. Well, the record shows there. Do you remember the date?

A. No, I don't.

Q. At any rate, when it was foreclosed, did you own it at the time?

[fol. 835] A. No.

Q. It was owned by either the man you sold it to or by someone else—

A. That's right.

Q. —that he sold it to?

A. Yes. I knew that I sold it to Musselman.

Q. You were through?

A. That's right.

Q. Do you know whether a deficiency judgment was taken in that case? I am just asking for your memory.

A. No, I don't recall about that.

Q. Did anybody ever attempt to collect a deficiency judgment from you on that property?

A. Never.

Q. Do you know what the purchaser at foreclosure sale paid for that property?

A. No, I haven't any idea.

Q. Do you know to whom the property was sold on foreclosure?

A. Don't know anything about that.

Q. Do you know what they sold it for?

A. Haven't the slightest idea.

Q. Now, Mr. Friedberg, according to the record introduced in evidence—is that the Sheldon Avenue property you are talking about?

A. Sheldon Avenue.

Q. According to the record, Mr. Friedberg, that property was taken in on the foreclosure suit by the Prudential Insurance Company. Was that a company that had a mortgage on it?

A. I believe so.

Q. Do you have any knowledge of how long the Prudential Insurance Company kept that property?

A. I haven't any idea.

Q. Do you know whom they sold it to?

A. No.

Q. Do you know how much they got for it?

A. Haven't any idea.

Q. Now, how about the Bedford Place property? Was that next?

A. Yes, that was the next one.

Q. According to the record, Mr. Friedberg, that was acquired in 1924. Are you mistaken about your dates?

A. That would be about right, yes.

Q. Did you own that property at the time it was foreclosed?

A. No.

Q. Whom did you sell it to?

A. Kennaw's.

Q. Do you know how long after you sold it it was foreclosed?

A. No.

Q. Do you know anything about that?

A. Don't know anything about it after that.

Q. At the time the foreclosure was filed it was owned by somebody else?

A. Oh, yes.

fol. 837] Q. On both of these properties, at the time you

sold it, state whether the mortgage payments were completed up to the time you sold it?

A. Oh, yes.

Q. And, if there was any default, according to the records there, state whether or not the default on those mortgages was yours or the default was somebody's that owned it after you sold it?

A. Defaulted after.

Q. In other words, you sold these properties to other people. Did you follow the chain of title, do you know to whom they sold?

A. I don't know anything after I disposed of it. I didn't know a thing about it after that.

Q. If there was any default on any of those mortgages, was that default by you or somebody else in the chain of title after you got rid of it?

A. It was by somebody else.

Q. Did anybody attempt to collect any deficiency judgment from you on this Bedford Place property?

A. No, never.

Q. Now, the other property was the Nelson Road Property?

A. Nelson Road property, yes.

Q. Now, at the time that was foreclosed, you did own that property?

A. Yes, I owned that.

Q. That property was, according to the records, acquired back in 1929. Does that sound about right?

A. That's about right.

Q. According to the records introduced, that property [fol. 838] was taken back by the HOLC in 1936 or '37.

A. That's about right.

Q. Do you know what happened to the property after they took it back?

A. No, I don't.

Q. Do you know how long they kept it?

A. I don't know.

Q. Do you know whether they derived income from it?

A. I haven't any idea.

Q. Do you know whether they sold it?

A. No.

Q. To whom?

A. No.

Q. Have no knowledge of that?

A. No.

Q. Mr. Friedberg, I want you to tell the jury in these real estate transactions that you handled, in those instances where there were mortgages on the property, why did you acquire the property with mortgages on them? What was your purpose?

A. Well, I thought that in disposing of it, disposing of property, usually it was easier to dispose of property with a mortgage on it than it was without.

Q. Now, on some of these instances you have testified that you took back second mortgages and third mortgages?

A. Yes.

Q. And, that means that the amount that you took back [fol. 839] was postponed beyond the mortgages that were ahead of you?

A. That's right.

Q. Is that what you mean?

A. That's right.

Q. Why did you permit these properties to go to foreclosure; the three in question?

A. Well, it seemed as though in the 30's the property seemed to go a little bit sour.

Q. You mean the real estate market?

A. Real estate market wasn't very good at the time, and I did not intend to take any of those back at that time because I wasn't going to throw good money after bad, and I was going to protect my savings.

Q. Did you consider at the time, did you consider it good business judgment to let those properties go back to the mortgage companies?

A. Certainly.

Q. Now, Mr. Friedberg, there was introduced in one of the records here—I don't recall whether there is specific testimony, but there was a reference to a loan from Mr. Weiss. Now, I am talking about Mr. Weiss, your former associate in the Buckeye Corporation.

A. Oh, yes.

Q. Not Mr. Weiss, the accountant. When you started

up your business, that is, started up for yourself, there appears, according to your books and records, a small loan by Mr. Weiss. Do you recall the amount of that?

A. Sure.

[fol. 840] Q. What was the purpose of that, Mr. Friedberg?

A. Well, Mr. Weiss—he made the patterns in our place. He was familiar with the cuttings and he was really a valuable man in the business. I felt when I was taking over the business myself that I needed somebody that had that knowledge of patterns, and inasmuch as he was a partner of mine and we were on very good terms, friendly terms, we cooperated in every way, I felt that I needed his services, and it was coming to a time where services of that kind were not available easily.

Q. Why did *you* make a loan from him?

A. Well, the reason why I made the loan is, I felt I would give him an opportunity, if he wanted to come into the business, as I needed him, I would ask him to put in that amount of money and consider it a loan. At any time he wanted to withdraw I would repay him.

Q. Did you feel he would continue to show his interest in the business if he had some money in it?

A. Why certainly he would.

Q. I think you have already testified that at some subsequent date when your cutter, West, left——

A. That's right.

Q. —you had to fall back on Mr. Weiss?

A. Mr. Weiss.

Q. Were you able to get anyone else at that time?

A. No; actually impossible.

Q. And, your former cutter, Mr. West, where did he go to work?

A. He went to work out in a plant, I forget the name of [fol. 841] the plant, one of the war plants out here.

Q. Did he come back to you after he finished that job?

A. Yes, he came back after.

Q. So, it was in this interim when you had no cutter that you fell back on Mr. Weiss?

A. Right.

Q. Mr. Weiss was a cutter?

A. Oh, yes, he was.

Q. Is that the kind of work Mr. Weiss did when the old Buckeye Tailoring Corporation—

A. That's right.

Q. Now, there has been some testimony or questions, rather, concerning the 1936 Pontiac automobile. Mrs. Friedberg testified that she thought that you paid cash for that automobile. What is the fact, did you or didn't you?

A. Yes, we did pay cash for it.

Q. Now, who is George Zimmerman? Is George his first name?

A. That's right. He is deceased.

Q. Who was he?

A. He is a brother-in-law.

Q. He is a relative?

A. A relative, that's right.

Q. Mrs. Friedberg's brother?

A. Mrs. Friedberg's brother-in-law.

Q. Where did he live?

[fol. 842] A. He lived in New York.

Q. Tell the jury frankly what was the—did you put a mortgage on this automobile?

A. I did.

Q. Tell the jury frankly why you put it on?

A. While these properties, of course, were in foreclosure and I didn't intend to take any of them back, I felt that I wanted to keep and protect our savings, or any of our possessions, and therefore I had this put on there, on the automobile.

Q. Did you borrow any money from him?

A. No.

Q. In other words, you put an encumbrance on this automobile?

A. Yes, sir, I did.

Q. You are stating that frankly?

A. Yes.

Q. You say you actually paid cash for the automobile?

A. I did.

Q. Now, according to the change of title, and I won't take the time to go into detail, it will probably take all day—

according to the chain of title there appears on some of these properties transfers to the name of Hess.

A. Yes.

Q. Who is Hess? I think it is Rae Hess.

A. That's a sister of Mrs. Friedberg.

Q. And, I think at some place along the line there are some transfers to Zimmerman.

[fol. 843] A. Yes, to Zimmerman.

Q. And, then transfers back from Zimmerman, back to you.

A. Back to us, yes.

Q. Were those actual sales?

A. No.

Q. When you were making these transfers to Mrs. Friedberg's relatives, your in-laws, tell the jury frankly why you were making them?

A. I made it for the same reason. Due to the fact that these houses were in difficulty, I had these transferred and transferred back to us.

Q. What was your purpose?

A. Well, it was for the purpose of taking care of, protecting our savings.

Q. Mr. Friedberg, you have testified that during the years involved, '44, '45, '46 and '47, you prepared figures on what we have been calling income tax work sheets?

A. Yes.

Q. Which you gave to your accountant for the purpose of having him prepare your income tax returns?

A. Yes.

Q. And, you and Mrs. Friedberg have both testified that those figures were compiled by her from the books and records that she kept, and Mrs. Appl compiled them for the year of '44 when she was there?

A. That's right.

Q. Now, I want to ask you this question, and this applies to all of the years, the years of '44, '45, '46 and '47. State to the jury whether you did or did not believe [fol. 844] that those figures accurately represented your income?

Col. Windom: I object. That specific question was asked yesterday.

Mr. Sillman: Not on the work sheets.

The Court: He may answer.

A. Yes, they were absolutely accurate, to the best of my knowledge.

Q. For the years of 1944, 1945, 1946 and 1947, at the time you signed your income tax returns, did you or did you not believe that those returns correctly showed your taxable income?

Col. Windom: I object. That question was asked yesterday.

Mr. Sillman: I didn't ask it that way at all.

The Court: The Court will permit him to answer. Overruled.

A. Yes, they were correct.

Q. Do you still believe that those returns accurately show your income for those years?

A. Why certainly.

Q. At any time that you prepared your income tax work sheets, or signed your income tax returns for the years '44, '45, '46 and '47, did you ever believe them to be false or fraudulent, or false and fraudulent?

A. Why, not at all.

Q. Do you still believe that they were not false?

A. Why, certainly, they were not false.

Q. Did you at any time during the years '44, '45, '46 and '47, in the preparation of your returns, the signing and filing of your returns, did you ever have any intention to defeat or evade income tax?

[fol. 845] A. Definitely not.

Q. Do you or do you not believe now that your income tax was fully paid for those years?

A. Certainly.

Mr. Sillman: You may cross examine.

Cross examination.

By Col. Windom:

Q. Mr. Friedberg, you have been familiar with the income tax law for many years, have you not?

A. Not particularly.

Q. You filed your first return in 1924, didn't you?

A. I filed any time that there was——

Q. Did you or didn't you file in 1924?

A. I presume I did.

Q. You had trouble with it in that year, too, didn't you?
You had to file an amended return way back in 1924?

A. I don't recall that.

Q. Your Defendant's Exhibit 1 shows that you did, isn't that correct?

A. I am not familiar with that.

Q. Well, if it is shown by your own exhibit, it is correct, then, is it?

A. If it is shown, it may be. I don't know. I am not familiar with it. It is strange to me.

Q. It is strange that you filed an amended return in 1924?

A. Yes. I may have filed it. I don't recall.

[fol. 846] Q. Did you or didn't you?

A. I am not sure.

Col. Windom: Is it conceded that it does show an amended return in 1924?

Mr. Sillman: According to this exhibit for the year of 1924—I assume the word AMD means amended return.

Q. Did you file an amended return for 1924?

A. If that's in evidence, I must have done so. It is quite a long time ago.

Q. Mr. Friedberg, you knew enough about income tax laws to know what the exemption in 1923 was, didn't you?

A. I wasn't sure.

Q. Well, you knew about it.

A. I knew it was more substantial than it is now.

Q. You filed a return in 1925.

A. That's way back.

Q. Mr. Friedberg, you said you came from New York to Dayton, Ohio, to get out of the tenement district and that type of thing.

A. Yes, sir.

Q. Weren't you making money fast enough in New York?

A. No, I think that was a very poor place to make anything. The opportunities weren't very good at all.

Q. Wasn't \$3000 in that brief time a tremendous savings in those days?

A. That's a savings of a period of time.

Q. A period of how much time?

A. Ever since we started to work.

[fol. 847] Q. Since who started to work?

A. Both of us.

Q. How much did you have when you were married?

A. Oh, I don't recall. I think it was less than a thousand.

Q. How much did Mrs. Friedberg have?

A. She had the difference.

Q. So, then, you didn't save anything after you were married?

A. Oh, yes. How do you mean?

Q. You said she had the difference.

A. She had the difference.

Q. What difference?

A. The difference between the amount that we used when we came over to Dayton.

Q. Let's just say you had \$1000 and she said \$3000, that leaves \$2000. That indicates you saved nothing during the time you were in New York, is that right?

A. That includes what we saved when we were married.

Q. What did she have when she was married?

A. I don't recall. That's so far back.

Q. How can you remember the \$3000, then?

A. We do remember that because that's an amount we used when we came over.

Q. Well, that's an even amount. Can you remember when you had \$2000?

A. No, I can't.

[fol. 848] Q. Can you remember when you had \$4000?

A. No, I can't.

Q. Can you remember when you had \$5000?

A. No.

Q. Now, you came to Dayton, if I recall, in about 1917.

A. Yes, about 1916 to '17. 1916, I believe.

Q. And, then, you came to Columbus in 1922?

A. '23.

Q. The first year you filed an income tax return was the year you came to Columbus, 1923, is that correct?

A. I believe so. I am not sure. I don't recall.

Q. And, you had trouble in that year, didn't you? You had to file an amended return in 1923, didn't you?

Mr. Sillman: I object to the use of the word trouble. An amended return doesn't indicate trouble at all. It indicates a correction.

Mr. Windom: Well, trouble with somebody's figures.

A. I don't recall that.

Mr. Sillman: Furthermore, there has been testimony about a refund, so you couldn't call it trouble if the Government refunds money.

The Court: Overruled. He may answer.

A. I don't recall.

Q. You heard Mr. Emerson Taylor testify that the records of this office showed that you filed an amended return, that on your original return you reported \$1.72 [fol. 849] tax, that was audited and that there was an additional tax of 90 cents, and then you filed an amended return with \$18 tax. Do you remember that?

A. I don't recall that.

Q. Then in 1924, interestingly enough, you filed a return \$18.01 tax. You later filed an amended return with an additional return of \$13.12 tax. So, right at the start, Mr. Friedberg, you were having some difficulties with your income tax returns, weren't you?

A. I can assure you, Colonel, it was not intentional in any way, and I don't recall it.

Q. How much did you save while you were in Dayton?

A. Well, I can tell you what we had when we came over here. We had approximately \$25,000 when we came over here.

Q. What makes you remember that?

A. Well, it is an occasion when we went from one town to another. It isn't just an every day occurrence, don't you know, that when you move to a certain city. It is a reflection there on what you had.

Q. Do you remember when you moved from one house to another what you had?

A. No.

Q. That's not enough of an occasion?

A. No, sir.

Q. Now, you said after you came to Columbus you purchased the business of the corporation?

A. That's right.

[fol. 850] Q. And, you made some reference to Mr. Sillman to the fact that initially you and Mr. Cohen had some business arrangement after you went in business for yourself?

A. That's right.

Q. You stated that Mr. Cohen stopped it because it was a losing proposition. Why was it a losing proposition? What did you mean by that?

A. Well, in that line of business you have got to do a tremendous volume of business in order to make any money, and we turned out as much as four, five thousand suits a year. We employed 25 to 30 people, and if you made about 75 cents profit on a suit you would make a lot of money. And, furthermore, being on the road a good bit, I was unable to get the business into a workable and a profitable manner on account of the complications we had between the partnership. There was always some rankling there and there was never any cooperation between Mr. Weiss and Mr. Cohen. Mr. Weiss was an expert tailor as well as a fine cutter and he was also a pattern maker, and of course, Mr. Cohen just had experience more or less as an assistant foreman, I believe, in his past occupations. And, therefore, it seems that whenever Mr. Weiss would try to tell him to do something, why, he says it is understood, and we could never get garments turning out satisfactorily. And, of course, it was prolonged for sometime until it came to a head. No matter how many customers I would get, I could never get down to the place where I would have a substantial number of customers that I could depend on, and therefore, we couldn't keep it going. We would never get a sizeable amount of volume.

Q. Now, what does all this have to do with the answer [fol. 851] to my question? I asked you why, after you went in business for yourself, Mr. Cohen terminated any contractual relationship with you that he had?

A. Well, he was unable to continue. He made his own—when I engaged him to make coats for me to finish coats, I agreed to pay him whatever he asked for at the time. He found that he was unable to do it, and he gave up at that time.

Q. You said it was a losing proposition. It was a losing proposition simply because there wasn't any money in the business at that time, isn't that correct?

A. At what time?

Q. There wasn't any money in the business at that time?

A. What business are you referring to?

Q. Your business.

A. You mean the present business, the one I took over?

Q. That is correct. At the time you had the contractual relationship with Mr. Cohen.

A. It was a losing proposition?

Q. That's right.

A. How did he know?

Q. You said it, he didn't. You said it yesterday to Mr. Sillman.

A. It was a losing proposition for him.

Q. If you were making money and he was contracting with you, why would he lose money?

A. That I can't understand. He was conducting his own business there.

Q. This name, Jacobson Tailoring Company, where did [fol. 852] you get that name?

A. Well, it was just—Jacobson Tailoring Company reminded me of a concern I used to do business with, and I used and coined the name for the purpose of using it to send garments to our finishing shops.

Q. In other words, just a name to hide behind to keep from revealing your own identity?

Mr. Sillman: I object to that.

A. No, Colonel, that wasn't it.

The Court: Overruled.

A. That wasn't that at all. It was just simply—

Q. Just explain it to me, what it was.

A. Yes, I will. The coats that we sent to have finished were our competitors. Our customers would not only use

our line but they would use the line of our competitors. Our customers had a habit of going into shops and going in there and seeing their garments and other garments. If they would see the name of the Buckeye Tailoring Company in one of my competitor's shops, why would they want to send me the work. That's the only reason.

Q. Why did you have to do business with your competitors with 48 states in the United States?

A. How do you mean? I don't understand that question.

Q. There were many, many people in the business of making coats and pants, weren't there?

A. No, there were not.

Q. Not in New York City?

A. I would not send such a distance.

[fol. 853] Q. Why?

A. It is the convenience. It is the idea of having a shop on the premises, as close as you can, because in this line of business it was the quick service that you give that kept you in business, and I had to have a close relationship there.

Q. But, it still was just a name to hide behind on a competitor basis?

A. Definitely, yes, sir.

Q. You say the ready-made sales started to increase in 1945?

A. Yes.

Q. What did you mean by increase in 1945?

A. Well, there were more people coming in and requiring a suit that they could get immediately, that they could put right on, one that was already made.

Q. What about the other business, then, if ready-made increased, what about the other business?

A. What other business are you referring to?

Q. Your wholesale and custom stuff?

A. The wholesale—well, the wholesale, of course, I couldn't supply too many of the wholesale customers because I couldn't get all the materials that I needed.

Q. Well, then, what are we to understand? That ready-made increased and that the other types of business decreased?

A. Yes.

Q. On direct examination you gave all the figures for 1945, '46 and '47. What were they for 1944, which is one of the counts in the indictment?

A. In '44?

[fol. 854] Q. Yes.

A. You mean the amount of garments?

A. Yes.

A. What are you referring to?

Q. The amount of garments. You listed them by coats and pants. How many coats did you have in 1944?

A. Well, I don't recall that just exactly.

Q. Do you know how many pants you had in 1944?

A. No, I just don't recall that.

Q. Why didn't you look that up?

A. Because I was just working on '45, '46 and '47.

Q. You are on trial for the year 1944, aren't you, as well as the other years?

A. Well, I don't know exactly just how many there were there.

Q. Why didn't you look it up, Mr. Friedberg?

A. Because I looked up '45, '46 and '47.

Q. Now, these transactions where you had work done at Forney, at Dirr, T & T Tailors, Nick's, Fechheimer and Weber's, were those retail sales?

A. They comprised everything.

Q. Were they ready-made stuff?

A. Everything.

Q. If they were ready-made, why did you have somebody do any work on them?

A. No, you misunderstand.

Q. I don't misunderstand. I think you do, sir. These were [fol. 855] not ready-made?

A. I don't mean I bought the ready-made garments all complete. There were garments that we had cut in the shop, trimmed like any other garments and had made up. Not for any particular customer.

Q. What are these transactions with Forney, Dirr and so on. Just tell me what they are.

A. They are coat shops. Now, Forney—

Q. I understand that, sir. Are they wholesale, retail or ready-made?

A. They are all of them.

Q. All different types?

A. Yes.

Q. Can you explain to me why your cash order book doesn't reflect this number of sales or this number of transactions?

A. Why, it certainly does. Every dollar of sales are reflected in that cash book.

Q. I am talking not about dollars but transactions themselves.

A. They are in the cash book.

Q. Where is the record for 1944?

A. What records are you talking about. You have the records there for '44.

Q. Why didn't you give the tabulation for 1944?

A. I didn't tabulate them because—no particular reason.

Q. Now, if I remember correctly, you said that on ready-made garments, those you listed are treated as miscellaneous income, is that right, sir?

A. That's right.

[fol. 856] Q. And, you didn't list the sales by name?

A. No.

Q. That where you actually fitted a garment you did list the sales individually by name?

A. Yes, we did.

Q. And, what was the differential in price between the ready-made and fitted garments?

A. The ready-made and better garments and made-to-measure?

Q. The ready-made and made-to-measure.

A. As I testified before, I said the average price of a ready-made suit was about \$33, and a made-to-measure was about \$55.

Q. Any suit in the vicinity of \$55 or more should appear in your records, shouldn't it?

A. It should.

Q. Will you take those records and point out to me where you have a sale to Martin J. Polster. That would be Exhibits 11 and 12. That's November 24, 1945. Can you point that out to me, sir?

Mr. Sillman: In what records?

Col. Windom: Any records that he has.

Q. I ask you to point out that specific sale being on your records. That would be your Exhibit 10, according to your testimony, sir.

A. You mean that order book, or, or what?

Q. This is Exhibit 10. That is a record in which you testified yesterday that every made-to-measure sale went in by name.

A. Yes.

[fol. 857] Q. Martin J. Polster paid you \$206, which he said was for fitted suits, on November 24, 1945. Point out where it is in that book.

A. I don't have to go through there. I think I can answer your question, since I can follow what you are talking about. I have just about grasped it. For instance, if Mr. Polster came in a prior year to that sale, I would not take that order and list it; another one and list it in here. I would use the old order blank and use the same number.

Q. Just point out any place where it is listed in your books. I want you to point the thing out to me.

A. Polster?

Q. Martin J. Polster; where that \$206 transaction appears in any of your books.

A. It may not have gotten in here. Supposing we didn't have one that got in here?

Q. Can you or can't you point it out?

A. There is no use in me going through this here, because if it is not in there, and you have already examined it, there is no use in me trying to look for it and take up time.

Q. All right. Can you point out to me, please, where the sale to John Cannata on April 27, 1946 appears in any of your books?

A. Cannody?

Q. Cannata. Can you point out where the sale to Paul Kaefer, \$54.68, which would be over the ready-made price, on 11/4/46, appears in any of your records?

Mr. Sillman: Would you give him the bank records in [fol. 858] stead of confining him to these records.

Col. Windom: Any records in evidence.

A. I am just saying that if we had made an order for any of these here people, we usually take those orders, as I say, and I take it on to the old order and use the number, and I don't put it in here.

Q. Where is the old order?

A. I don't know that, where the old order is. I may have made one in '43 for that party, or '42.

Mr. Sillman: Now, if the Court please, I am going to object to the line of questioning unless Mr. Windom is willing to let the witness have the deposit slips on which the entries that he is talking about are located, and give him the date, instead of taking the time to let him leaf through all of them. You don't hand the man this record here when you know that the entry is in that record, and say, "Now you look through this and point it out to me." The witness isn't familiar with his books and records. Let Mr. Windom give him the record where the entry is made and he will point it out to him, instead of trying to throw a lot of confusion into the case.

Col. Windom: I object and move that the remarks of counsel be stricken.

Mr. Sillman: I want to be fair.

The Court: The jury will disregard the remarks of counsel at all times. Your objection is overruled.

Q. Mr. Friedberg, didn't I understand correctly yesterday that you told Mr. Sillman that those records reflected all of your business?

[fol. 859] A. These records?

Q. Yes.

A. No, I didn't say that.

Q. All of the tailored stuff?

A. All of these, and in addition to those that I am talking about.

Q. Don't those reflect all of your tailored garments?

A. All of the income, the garments that you are talking about, the income of those garments went into the bank. Every penny of it.

Q. Where is it on your records, sir?

A. This here is an order book where anybody runs over, understand, and takes an order blank and runs an order through here, and it is possible that no order went through this here.

Q. Why didn't you enter those orders on there?

A. This isn't absolutely accurate. There are many orders, and the people that you had here were needlessly embarrassed, they are not the people that cash checks.

Q. Now, not out loud, but will you read to yourself, silently, item No. 2, both paragraphs (a) and (b) on Defendant's Exhibit 3.

A. That's perfectly all right.

Q. Now, didn't you tell this Court and jury yesterday that everyone of those sales were recorded in those very records, those order records?

A. Every one? No.

Q. Then, what were you trying to do by introducing that exhibit, please? This exhibit is incorrect, isn't it?

A. Not that I know of.

[fol. 860] Mr. Sillman: I object to that inference, too, if the Court please, I object to the inference that if there is an error in an entry being made in one book instead of another.

The Court: Sustained.

At this time, ladies and gentlemen, the Court intends to take a brief recess. You must follow the instructions heretofore given you by the Court.

(A brief recess was taken.)

By Col. Windom:

Q. Mr. Friedberg, this sale to Allen Kempke, \$49.50, on June 6, 1946, and \$76.37 on November 19, 1946. Does that appear any place on your order book or cash book records?

A. Perhaps not.

Q. I didn't hear your answer.

A. Perhaps not.

Q. Does it or doesn't it?

A. It may not appear on the order book.

Q. Chester Moechart, \$25 on February 26, 1946. That could have been a ready-made suit, I assume?

A. Could have been.

Q. That is, it would be possible?

A. It is possible.

Q. \$44.50 on April 22, 1946. Would that appear any place on your books, sir?

A. Probably not. I don't know.

Q. Lucy Roumeliote, a total of \$90.77, on May 16, 1946. [fol. 861] Does that appear any place on those books?

A. Perhaps not.

Q. Walter Shapter, \$71.59 on October 26, 1946, and \$154.50 on May 15, 1947. Does that appear on the books any place?

A. Perhaps not.

Q. F. & R. Lazarus Company, \$429.80. That was for alterations?

A. That's right.

Q. On June 20, 1947. Does that appear any place on your books?

A. That wouldn't be entered in the order book.

Q. Does it appear on any of the books?

A. It appears in the cash book.

Q. Where in the cash book?

A. In our cash book there.

(The witness is handed Defendant's Exhibit 2.)

Q. June 20, 1947 is the approximate date. You actually deposited that on June 23, so you might have carried it any time from the 20th to the 23rd.

A. Well, I see an item here in the amount of \$500 marked D. Friedberg.

Q. This is \$429.80.

A. That's included in there.

Q. How do you know it?

A. Because it couldn't have been anything else.

Q. Is the F & R Lazarus Company mentioned there at all?

A. Not necessarily.

Q. Now, this John Dillie sale of \$51.58 on June 16, 1947. Does that appear any place in your records?

[fol. 862] A. It may not.

Q. Edward C. Fendt, \$70.13 on May 28, 1947. Does that appear any place in your records?

A. Well, when you say records, do you mean——

Q. Your cash book, your order book.

A. It may not be in the order book, but it is in the cash book or in the bank deposit.

Q. Point it out to me in the cash book. You deposited on May 29, 1947.

A. How much was the amount?

Q. \$70.13.

A. I see an amount of \$200 here on that day.

Q. What does that have to do with \$70.13?

A. That represents that check also.

Q. How do you know that?

A. Because I know it. If it is that deposit, it is included in that.

Q. Is there any mention of Fendt in there?

Mr. Sillman: Why don't you show him the record in which it is mentioned?

Col. Windom: Who is doing this cross examination?

The Court: Just a moment. If counsel has an objection, you will make it, but no colloquy between tables. You are both good lawyers.

Q. Take Willard Lauterbach, \$86.52, in March of 1947. Does that appear on your order books or your cash books? [fol. 863] A. It is in the cash book.

Q. Point it out?

A. What date?

Q. You made two deposits. You deposited \$25 on 3/6/47; the balance on 3/26/47.

A. 3/6/47. There is an amount of \$400, which includes that check.

Q. How do you know it includes that check?

A. It must include it.

Q. Samuel Roderick, \$70.00, 8/4/47. Does that appear on your order book?

A. It may not appear on the order book.

Q. Does it appear on the cash book?

A. It is in the cash book, yes, sir. What date?

Q. You made the deposit 8/8/47.

A. Was that deposit on that particular day or the 9th, would you say, or the 7th?

Q. You show the deposit on 8/8.

A. Well, there is a deposit on the 7th and 9th here.

Q. Do you have any entry reflecting that Roderick matter?

A. Yes, sir, \$200 and \$550.

Q. What do those have to do with Mr. Roderick?

A. Because they are included in that.

Q. Albert Vitek, \$57.73 on April 21, 1947. Does that appear on your order book?

A. It may not be in the order book.

[fol. 864] Q. And, that would appear on your cash book in one of these other items that you contend you merely read, is that right?

A. Yes, sir.

Q. Claude M. Bendure.

A. Bendura.

Q. A total of \$50 in June and August 1947. Does that appear on your order book?

A. It may not be there.

Q. That would be another one of these lumped items?

A. It may be.

Q. Tobias Polster, \$71.59, January '46, and \$69.53 in September '46. Do those appear on your order book?

A. May not be.

Q. Well, now, I want you to answer me definitely yes or no. Do those items I have read you, sir, appear on your order book?

A. They may not be there on the order book.

Q. Do they or do they not?

A. I wouldn't know. I wouldn't know unless I looked through the order book.

Q. Let's take the time. I want a positive answer to that question. To save time, would it be convenient if at noon you looked through and be prepared to answer that question?

A. Yes, I will do that.

Mr. Sillman: I am objecting to that line of questioning again, for the simple reason, Your Honor, that the questioner knows it isn't there and knows it is in a different record.

The Court: Overruled. It is up to him to get an explanation. He may answer and explain his answer, if he so desires.

Q. Is the defendant willing to answer it is not there?

A. No, it is not in there.

Q. Do I understand correctly, your explanation is that on reorders you did not again enter them?

A. On a good many of them, and practically all—I wouldn't say that they were all, but a good many of those you read.

Q. Was it your policy not to reenter reorders?

A. Yes. Something unusual about a customer that we like to keep on.

Q. By reorders we mean customers coming in the second and third time for purchases?

A. That's right.

Q. Now, how much did you make when you were working in New York, Mr. Friedberg?

A. Various salaries, from the time I started work.

Q. Can you give any—speaking of the time you were married?

A. I started working between ten and eleven years old.

Q. Let's start when you were married, which is when counsel started with you. What were you making then, sir?

A. Oh, I would say between twenty to thirty dollars a week.

Q. And, what were you making at the time you left New York?

A. I don't recall just exactly. It is a little too far back. [fol. 866] Q. Would that figure of twenty to thirty dollars a week be an approximate average during the time you were in New York?

A. Yes.

Q. What did you make when you first went to Dayton?

A. Well, I opened the—I started the Consumers Merchandise Company, and to the best of my recollection, excluding the sale of stock after I got through with the business, I would say that I made about four to five thousand dollars.

Q. During the time you were in that business?

A. Yes, sir.

Q. How long were you in the business, sir?

A. I would say about a year and a half.

Q. That would be very lucrative income for that period of time, would it not?

A. It is.

Q. Why did you sell the business?

A. Why did I what?

Q. Why did you sell the business?

A. Well, I sold the business because I figured I was next in line to be called up for the draft. I wanted to wind up my affairs.

Q. When did you sell it?

A. I sold that in—just the latter part, I think, of 1917.

Q. You were married at that time?

A. Oh, yes.

Q. Exactly what made you think that you were about to [fol. 867] be called up for the draft?

A. Well, according to my classification.

Q. What was your classification?

A. I think it was at that time 2-B and they had already called up the—exhausted those that came prior to me.

Q. And, were any 2-B's ever called?

A. I don't—

Q. To your knowledge?

A. Not that I know of.

Q. That's the only reason you had for selling that very lucrative business, to be ready to be inducted?

A. Yes, sir.

Q. How long did it take you to close it out?

A. It didn't take very long because I sold it out, sold out the stock.

Q. Wouldn't it have been the part of wisdom to wait until you received your notice to sell?

A. Well, no, no, I don't think so.

Q. What did you do then? You sold the business, and what did you do?

A. I went to work for the Recording Computing Company, meantime, who were working on war contracts.

Q. How much were you making there?

A. It was somewhere's around forty to fifty, sixty. Just varied there as I had my promotions.

Q. What period?

[fol. 868] A. A week.

Q. That was quite a comedown, wasn't it, from your previous occupation?

A. Well, I don't know. After all, it wasn't too much of a comedown, I don't think.

Q. And what did you do next after that job?

A. I was with the Naval Ordnance Plant.

Q. If I understand it, Naval Ordnance and this Recording and Computing are the continuation of the same plant?

A. That's right.

Q. What did you do after that?

A. After that I went into the American Mill Tailors. I went to work as a salesman.

Q. Did you initially go in as an organizer?

A. Beg pardon?

Q. Were you in on the organization of that corporation?

A. No, just an individual who was operating, and I went to work for him.

Q. How much were you making at that time?

A. Well, it varied between \$50 and \$125.

Q. Now, what year did you go to work for them?

A. That was prior to the time—I believe it was in '21; 1920 and '21.

Q. Who composed the American Mills at that time, who were the owners?

[fol. 869] A. Party by the name of Irving Stein.

Q. How do you spell it?

A. S-t-e-i-n.

Q. Was he the sole owner?

A. I am not sure about that.

Q. I mean to the best of your knowledge.

A. To the best of my knowledge.

Q. And, when did you first become interested in the company financially?

A. I was never interested financially.

Q. You were never interested in that?

A. No, sir.

Q. How long did you continue to work for American Mills?

A. That was prior to the time I started with the Buckeye Tailoring Company. I just don't recall how long that was.

Q. When did you start the Buckeye Tailoring?

A. The latter part of 1921, I believe it was.

Q. How much money did you put into the Buckeye when you started with it?

A. \$600.

Q. Each of you put in \$600?

A. That's right, four of us.

Q. And, you came to Columbus in 1922 or the first part of '23?

A. That's right.

Q. Now, will you explain to me just how you could have [fol. 870] amassed for those days the very considerable fortune of \$25,000 between the time you were married and the time you came to Columbus?

A. Well, we both worked.

Q. Only while you were in New York.

A. Oh, no, we both worked in Dayton.

Q. Pardon me, that's right. You both worked.

A. Yes.

Q. The figures still don't add up, do they, Mr. Friedberg?

A. To the best of my knowledge, they do.

Q. What percentage of your joint income were you able to save?

A. Rather considerable part of it. I can't tell you just about.

Q. What was your best judgment.

A. Most of it.

Q. Well, now, you have objected to my use of the word large.

A. I can't give you any figures on that. It's been so far back. We did save most of it.

Q. What do you mean by most? Will you give me a percentage.

A. I am sorry, I can't tell you that.

Q. Was it 50 per cent?

A. More than that.

Q. 75 per cent?

A. I couldn't say. Perhaps closer to that.

Q. Would you say it was approximately 75 per cent, then?

A. I wouldn't be in a position to say anything accurately.

Q. Well, Mr. Friedberg, unfortunately, I am going to [fol. 871] have to insist as to how much you were saving.

Mr. Sillman: You can't insist if he can't do it.

The Court: If the witness is unable to answer, he can give the best he can. Do you have an approximation of it, Mr. Friedberg?

The Witness: I haven't any approximation at this time. I am trying to be as helpful as I can, but I am not—I don't want to incriminate myself any more.

Q. Are you meaning to tell this Court and jury that you and Mrs. Friedberg saved in excess of 50 percent and approximating, I think were your words, 75 per cent of your income during those years?

A. We saved a very substantial sum, Colonel. You must realize—

Q. Is your answer yes or no?

A. I can't tell you that. I am sorry.

Q. You may answer yes or no and explain all you want. What is the answer?

A. I just can't tell you that. That's so far back there.

Q. Where did the money come from?

A. From our earnings.

Q. I am trying to account for your \$25,000 in late 1922 or early '23 when you came to Columbus. You have said the only source of it, if I understand correctly, is from the joint savings of yourself and Mrs. Friedberg.

A. That's right.

Q. Now, what I am trying to get out is how did you manage to live on the extremely small portion that remained? What is your explanation of how you were able to save that much?

[fol. 872] A. Colonel, when somebody is obsessed with the fanatical idea of saving money, it is not so difficult. That's my only explanation to you.

Q. That is your only explanation, sir?

A. Sir.

Q. Well, if you had something over \$50,000 in 1936, that

represented an increase of in excess of \$25,000 between 1923 and 1936. How do you account for that increase, sir, remembering, please, that the depression intervened?

A. Through our savings.

Q. And, what percentage of your savings there were you able, or percentage of your earnings, were you able to save there?

A. A considerable part of it.

Q. What is your best judgment?

A. Well, the only thing I can tell you, Colonel, that amount which would add up to our savings, and the balance is what we spent for our living. That's the only thing I can tell you.

Q. All right. If I temporarily accept that answer, how do you explain the difference, the increase between 1936 and 1947?

A. In the same manner.

Q. The same way?

A. The same way, yes, sir.

Q. Well, that would mean, in other words, this saving which you say you had, for example from '23 when you say you had \$25,000 or approximately that, in 1936 both you and Mrs. Friedberg have used the phrase far in excess of \$50,000, will you tell me how far in excess of \$50,000 that was?

[fol. 873] A. I wouldn't know myself. Far in excess.

Q. What is your best estimate?

A. I couldn't tell you.

Q. Was it closer to fifty or closer to a hundred?

A. That's quite a variance there. In between there somewhere.

Q. Why didn't you file an income tax return those years?

A. Colonel, to the best of my knowledge, I filed an income tax report every year that I am aware of.

Q. Your own record, Exhibit No. 1, shows that you did not file income tax returns for many of those years? Why didn't you?

A. Whenever there was a taxable amount to be paid, I am sure I filed an income tax return.

Q. Well, you don't contend you have a wife Helen, do you?

A. No.

Q. The record shows, then, that you filed no income tax return, or a non-taxable return, which would indicate that your earnings were quite small, were they not?

A. No, it would not.

Q. What was a non-taxable return?

A. A non-taxable return is, I think, a man that earns a certain amount of money and is entitled to a certain exemption, and I think a man could make more than I made and still be exempt. That's my understanding.

Q. Well, there were three of those years, sir, when a return was filed indicating no tax liability. That would mean that you had a very small income for those years, would it not?

[fol. 874] Mr. Sillman: I object, if the Court please.

The Court: Yes. Sustained.

A. I didn't understand it that way, Colonel.

Col. Windom: I don't see on the basis of either the objection or the sustaining—

Mr. Sillman: If the Court please, his own witness has testified that the non-taxable return cannot possibly give any indication of the amount of income. No connection between those two things. That's your own expert, Mr. Montgomery.

Col. Windom: I get you.

[fol. 875] Q. What were your exemptions in 1926?

Mr. Sillman: He didn't place it on the basis of exemptions, either.

The Court: Just a moment. You gentlemen are not sworn as witnesses. Let the witness testify.

Q. What were the exemptions in 1926 which you had, please?

A. I don't recall what they were.

Q. What were the exemptions in 1927?

A. I don't remember.

Q. Mr. Friedberg, were they any more than yourself, a [fol. 876] wife and two children?

A. Could have been.

Q. Were they?

A. I don't know. I can't tell you.

Q. What could they have been, if they were?

A. I don't know at the time.

Q. Can you give us any conceivable thing that they could have been?

A. No, that's going back too far. I don't know what the instances were.

Q. Were you supporting any other members of your family then?

A. Not to my recollection, no.

Q. In 1930 what were your exemptions?

A. I can't recall that.

Q. Were they any more than yourself, Mrs. Friedberg and two children?

A. That's all there were.

Q. In 1937 did you have any more exemptions than those four?

A. They may have been some exemptions. I wouldn't know, but so far as the dependents are concerned, that's all there was, my wife and two children.

Q. You understand, I am not referring to the standard exemption that is granted each year on a blanket basis.

Now, from 1936, when you had in excess of \$50,000, to 1947 when you had in round figures \$100,000, if I recall, that's what the box revealed, how could you have saved that much money without filing any income tax returns in the years 1938, 1939, 1940, 1941?

[fol. 877] A. I explained that to you before.

Q. You have told Mr. Sillman that you filed tax returns in every year when you had any income, haven't you, or felt—

A. Whenever there was any taxable income.

Q. Then, may I assume that you had no substantial income in those years?

A. Oh, yes, I did have very substantial income.

Q. In 1942, Mr. Friedberg, you filed a return on which the tax was \$27.50. That would indicate a relatively small income, would it not?

Mr. Sillman: I object to that. That doesn't indicate income at all.

The Court: Sustained.

Q. What do you say about the year 1942. Did you have a substantial income, or didn't you?

A. In 1942? That was the time I started the business. I don't think there was at that time. I just don't recall, but I don't think it was substantial.

Q. Mr. Friedberg, Exhibit 1 (g), which has been stipulated to be your income tax return, shows that you had a gross income for 1942 of exactly \$2,400. What happened between these other years when you say you were making so much money to this year when you are down to \$2400, \$200 a month, sir?

A. Well, I believe we were just starting the business. You couldn't expect anything to develop in the way of earnings and income in the first year. We started with practically very little.

[fol. 878] Q. If that other business, the old corporation, was so lucrative, why did you close it out?

A. The old corporation?

Q. Yes.

A. Because it seemed as though we couldn't get together, and I felt that I didn't care to be in the business any more with the credit, the strain of buying, credit was bad. I naturally did the buying and had to face these people who we had paid bills to, and I wasn't going to continue any longer. I felt if I started out with myself I think I could take care of the credits better and be in good position.

Q. Those reasons justified, you feel, dropping a lucrative business like that?

A. I don't feel that it was so lucrative. The word lucrative—

Q. How much were you making out of it, then, if it wasn't lucrative?

A. Well, I was making from, I would say from \$3500 to \$4500 a year.

Q. So, you were willing to drop that business and come down to a \$2400 business?

A. It isn't always—I feel a little bit different about that.

It isn't always the fact that a person may make a little more money and be tied down to partners that tell you what to do. I probably rather make a little bit less and then I am conducting my own business.

The Court: At this time, ladies and gentlemen, the Court intends to adjourn until two o'clock this afternoon. You must follow the instructions heretofore given you by the Court.

(A recess was taken until two o'clock, January 4, 1952.)

[fol. 879]

FRIDAY AFTERNOON SESSION

January 4, 1952

DAVID FRIEDBERG, resuming the stand, testified further as follows:

Cross examination (Cont'd.).

By Col. Windom:

Q. Now, Mr. Friedberg, on that 1942 return, that's the year you reported \$2400 gross; on your 1943 return you reported \$2500.87. In other words, an increase of only \$187 gross over 1942. How much of that were you able to save, sir?

A. Oh, I couldn't say.

Q. I didn't hear you.

A. I couldn't say just exactly how much.

Q. Incidentally, on your return for 1942 you listed your occupation as a salesman. Why did you list yourself as a salesman rather than proprietor of the business?

A. I should have listed it that way. That's a mistake. I admit that's an error. Of course, I was really selling. I was a salesman.

Q. Why did you do it that way?

A. Well, I really had no particular reason.

Q. You also carried your social security number just as if you were a hired employee?

A. Well, I do have a social security number.

Q. You carried that on there just as if you were a hired [fol. 880] employee, didn't you, and the next return, 1943, you carried yourself as a salesman?

A. Yes.

Q. Rather than as the owner of the business?

A. That's right.

Q. You had no reason to do that?

A. No, I didn't, other than I was a salesman.

Q. 1944, you carried your gross income as \$2735.97. How much of that were you able to save, Mr. Friedberg?

A. I couldn't tell you just exactly.

Q. 1945, Mr. Friedberg, you carried your gross as \$2012.36. What were you able to save out of that?

A. I couldn't tell you that.

Q. In 1946, Mr. Friedberg, you carried it as \$4943.93. What were you able to save out of that, sir? Were you able to save any of that, sir?

A. I presume so.

Q. In 1947 you carried your total gross as \$7723.05. Now, Mr. Friedberg, with those payments in mind, remembering that in 1937 you filed a return upon which you paid no tax, from 1938 to '41 inclusive you filed no returns, then you filed these returns which I have just read to you, starting with \$2400, \$2587, \$2735, \$2012, \$4943, \$7723, where did the difference between what you said you had in cash in 1936 and 1947 come from?

A. What was that? How much was it in 1936?

Q. I have been trying to find out. You said it was far in excess of \$50,000.

[fol. 881] A. That's right.

Q. You have so far failed or refused to fix the amount.

A. Not refused. I don't know what it is. I can't fix an amount.

Q. We have agreed—at least, I believe you and I are in agreement that in 1947 you had substantially \$100,000?

A. Yes.

Q. I believe the figures are just slightly below that. Where did the difference between what you had in 1936 and 1947 come from?

A. From our earnings, from our savings.

Q. With income like that, sir, your total income doesn't add up to that.

A. I don't know what income you are referring to now. You just mentioned those, but you haven't mentioned any income in '38, '39, '40.

Q. If you had any income why didn't you file an income tax return?

A. As I said before, Colonel, I didn't know that the income or the amount of income was such that it would be necessary to file an income tax or have a taxable income.

Q. David Friedberg, who had to file an amended return in 1923 and 1924, didn't know about the income tax laws in 1937, '38, '39, '40 and '41?

A. I wasn't too familiar with them. I didn't know all the technicalities or the details concerning them.

Q. You knew you had to file an income tax return, didn't you?

A. I think at that time it may have been optional.

Q. Well, if it was optional, why did you file one in 1937?

A. Because it was optional.

[fol. 882] Q. Why did you file it in '28 and '29—pardon me, in 1930?

A. I don't know. I really don't know. You are taking me back a little too far and I don't know what the reason was or what the conditions were.

Q. What explanation do you have as to your claimed increase in cash and securities between '36 and '47?

A. The difference came from the earnings, from our earnings, the savings. That's what it represents. We had no other means of income.

Q. What you want us to believe, then, is this, that you have suddenly become strictly honest in relation to filing your income tax returns?

Mr. Sillman: I object, if the Court please.

The Court: Yes, sustained.

Q. Now, this business when Mr. Curtis came in to talk to you and mentioned your employees. Why would Mr. Curtis, by any stretch of the imagination, be interested in the number of employees you have?

A. I haven't the slightest idea why. He mentioned it. He saw it on the return.

Q. Point out the line number on that return where your employees are listed?

A. I don't know.

Q. Look at it, please. You mentioned two employees.

A. Colonel, I don't know whether this is the return he had with him.

Q. You stated in direct examination that he was there for the year 1942, and that is your '42 return, is it not?

A. Yes, this is a '42 return.

[fol. 883] Q. Now, you mentioned two, and you said employees.

A. Two or three. I don't know just how many.

Q. You actually claimed two dependents on that return, didn't you?

A. Yes, I did.

Q. Therefore, isn't it a fact, Mr. Friedberg, that you are completely in error relative to this conversation?

A. Oh, no, definitely not.

Q. Where did Mr. Curtis get the matter of employees off that return?

A. I didn't say he got it from that return.

Q. Where would he have gotten it?

A. I don't know. He had a return there, and he says you reported two employees or three employees. He says, "Who are those people in the back there."

Q. There are all your returns from '42 to '47. Point out to me on any of those returns where you list employees.

A. I can't recognize these here as the one that he had.

Q. You didn't file any prior to that. What else could he have had?

A. I don't know. He had a return there. I don't know whether he looked at the plant and said anything about two or three employees. Where he got that from I don't know, but that's definitely what he said. I am not merely making this up.

Q. Mr. Friedberg, on direct examination you said, I believe, that you did omit income from interest, for example, in 1947, because it was not substantial.

A. What interest are you referring to?

[fol. 884] Q. You said, in answer to a question from Mr.

Sillman, that you actually did omit interest from your 1947 return and that it wasn't substantial, is that correct?

A. If I testified that, I did.

Q. In 1947 what kind and how much interest bearing securities or deposits did you have?

A. Those are bonds that you are referring to, isn't that it?

Q. Anything that bore interest in 1947.

A. I don't recall. I don't remember just how much it is, offhand. It may have been thirty or thirty-one thousand dollars.

Q. Do you mean to tell us that the interest on that is not substantial, that you were making so much money that that was an inconsequential amount?

A. I don't understand. Making so much money?

Q. You said you didn't report it and that it wasn't substantial. I am trying to find out what you mean by substantial.

A. You mean the interest? Are you referring to the interest?

Q. To the interest.

A. Well, that was interest on the coupons, representing the coupons.

Q. On every interest-bearing obligation you had, sir.

A. Well, if you will recall, Colonel, that in the last war, the first World War, the interest-bearing coupons were not taxable, and I was under the same impression at that time. Otherwise I certainly would not have left that out.

Q. But, we are in agreement that you didn't report it?

[fol. 885] A. Yes, sir, we are.

Q. I am not quibbling with you on that. You said the amount wasn't substantial and I am trying to find out what an insubstantial amount is. Now, you had in that box substantially a total of \$100,000 in cash and securities?

A. Yes.

Q. And, were you making so much money that the interest on those securities was not substantial?

A. I don't understand what you are referring to.

Q. You told Mr. Sillman that your place of business is in a rather obscure location?

A. Yes.

Q. Actually, it is in a pretty good location, if you saved all this money, isn't it?

A. Good location?

Q. Yes.

A. Well, can I describe the location to you?

Q. Answer the question yes or no.

A. I don't think the location is good at all. It is a very poor location.

Q. How do you gauge a location?

A. By the business alongside of me, by the business on the other side of the street, by the passers by.

Q. The amount of dollars and cents you take in, then, is inconsequential?

A. The amount of dollars and cents? Are you referring to the wholesale business also?

[fol. 886] Q. I am referring to any income you had.

A. The wholesale business doesn't come from that street.

Q. Mr. Friedberg, does the fact that you have many customers at a given location or a lack of customers, make it good or bad? Yes or no.

A. I don't understand that, again. Will you please repeat that.

Q. No, I will let it stand at that. You told Mr. Sillman that your miscellaneous income averaged from \$500 to \$1000 a year, generally closer to \$1000 if my notes are correct, and that it represented, and I quote, "A very insignificant part of your income."

A. That's right.

Q. What was your income if \$1000 was insignificant?

A. Well, as compared to the other, it is.

Q. Is \$1000 insignificant in \$7000, sir?

A. As compared to the rest.

Mr. Sillman: If the Court please, I am going to object to what "I consider."

The Court: Overruled.

A. I say the cleaning, pressing, repairing, weaving and so forth, of \$500 to \$1000, as compared to the rest of the business—I would say it was insignificant.

Q. Then, one-seventh of your business in 1947 is insignificant, is that what you mean to say?

Mr. Sillman: I object, again, because the questioner is using fictitious figures, and the paper he is holding in his hands would indicate it. He is talking about net and gross [fol. 887] income. He talked about \$65,000.

The Court: If the Court remembers correctly, counsel for the defendant went into that yesterday on his examination in chief and the witness said it wasn't significant.

Mr. Sillman: If the Court will permit me to say, I am not objecting to cross examination on the subject. I am objecting to comparing \$1000 cleaning and pressing with \$7000 net income as against the \$65,000 that's on the return. That's what the witness is talking about.

The Court: I understood counsel for the Government to be—

Mr. Sillman: He is comparing it with the net income. There is \$65,000 shown on there, \$73,000. One thousand is insignificant.

The Court: He may answer. He may explain if he so desires.

A. Well, now, the net income on a thousand worth of cleaning and repairing is nil.

Q. Am I right, your total sales that you report was \$64,000 and some?

A. Yes.

Q. Was that insignificant to you?

A. Oh, no, that was substantial.

Q. What did you mean when you said—

A. I meant as compared to the income from the rest of the business, that figure that you quoted. I say \$1000 is insignificant as compared with \$64,000.

Q. In other words, then, with a taxable—to get down to a taxable income—\$700, you consider that type of business insignificant?

[fol. 888] A. You mean cleaning, pressing, repairing?

Q. Yes.

A. Yes.

Q. Mr. Sillman stated yesterday that he was attempting to show that this was a very small business, referring to your business, sir. Is a business that has sales of \$64,000, in your opinion, small?

A. I would say it was in this relationship. When you

take a small wholesale business like we carry on, and I don't think there is another business in this particular line of wholesale business that is as small as we are, and the details in connection with it, and furthermore, the profits that are connected with it, which are very, very small, as compared—you remind me about a lucrative business that I carried on formerly with the corporation, and we couldn't keep on there on the wholesale business. And, I believe 50 percent or more of the wholesale business in this year isn't any different than that was, and half of the other business, the retail business, and together with the ready-mades that were in there and a small profit connected with the ready-made, a quick turnover, I think that all represents a small business.

Q. Now, let's see, at the time you were in the corporation here in Columbus——

A. Yes.

Q. —what would you say your annual income averaged, sir?

A. I would say from \$3500 to \$4500.

Q. Well, this morning you said from \$4500 to something. Do you remember?

[fol. 889] A. I think I said from \$3500 to \$4500.

Q. Therefore, you are stating that back during the depression years you made more than you had at any time up to 1946 when you showed \$4900, is that right?

A. Yes.

Q. That you made more during those depression years?

A. Why, certainly.

Q. Why do you say certainly?

A. Because we kept that business, that business did not have a good credit. We were withdrawing the money, but left the business in a bad credit standing at all times, which I just reversed that situation with the new business. I drew my money according to the business that could stand a good credit when I started it, but the last business did not enjoy that.

Q. Is Mrs. Friedberg wrong when she says your credit rating is bad?

A. At this time?

Q. At any time.

A. My credit rating is good.

Q. Then, Mrs. Friedberg was in error?

A. No.

Q. She is not?

A. She said I needed the money. She he'ped me out with that money so I could build up a good credit.

Q. She said she had to loan you money so you could increase your credit.

[fol. 890] A. Why, certainly, to keep my bills paid promptly.

Q. Now, what is right.

A. That is right.

Q. That you needed the credit?

A. Why, certainly. No business can go on successfully without good credit.

Q. Now, this loan that you negotiated when you reported that you had \$150 in cash. Tell me again why did you need that loan?

A. What loan was that, Colonel?

Q. Now, this loan application which you executed, including the mortgagor's statement, Federal Housing Administration, which you signed under date of October 20, 1939. Why did you negotiate that loan?

A. To repay a construction loan.

Q. To what?

A. To repay a construction loan.

Q. Why was that necessary, sir?

A. Because I wanted to have a mortgage on the property so it would be easier to dispose of.

Q. And, why was it easier to dispose of with a mortgage in 1939?

A. I think it is easier to dispose of property at any time with a mortgage on it.

Q. Did you have any difficulty getting mortgage loans in 1939?

A. I don't recall.

Q. Did ; or didn't you?

A. I don't recall that, about the difficulty.

[fol. 891] Q. Did you have any difficulty borrowing this money yourself?

A. This here?

Q. Yes.

A. Why, no, I didn't have any difficulty borrowing it.

Q. Why would you expect anybody else would?

A. That's why the building and loan companies are in business.

Q. And, what was your reason for this?

A. I am telling you, that's the reason what I put it on there for.

Q. You borrowed that money because you needed it.

A. No, I did not need it.

Q. A man with someplace between fifty and a hundred thousand in cash would go out and waste his money by paying interest to somebody?

A. Colonel, is it uncommon for people that have money to have mortgages on buildings?

Q. Is that what you want us to believe?

A. Yes, sir.

Q. And this financial statement which, if I understand, you now claim is a gross understatement—"Bank accounts, on hand \$150.00. Other savings," and you list that check, \$2000. Why didn't you list your other savings?

A. Why would it be necessary to make a loan if I listed my other savings.

Q. What were you doing? Were you misrepresenting the facts to the Federal Housing Administration?

A. Why, no, I gave my property as security. If that wasn't sufficient, it was up to them to loan it or not.

[fol. 892] Q. In other words, you felt it was necessary to misrepresent the facts to get a loan?

A. I did not misrepresent anything. I just did not overstate the value of the property and my assets.

Q. Net worth in your business, \$2000. Is that what the business was worth at that time?

A. I just don't recall.

Q. What do you think your business was worth October 20, 1939?

A. I can't remember that.

Q. Now, in relation to Mr. Curtis' visit. Why did you take him to the Handler Box in the Market Exchange Bank?

A. He told me, as I have said before, and I don't like to repeat any more the things that went on there.

Q. You may repeat anything you desire.

Mr. Sillman: Just answer the question.

A. What was the question.

Q. Why did you take him to the Handler box?

A. Because he said I was not to go down to the box until he investigated it.

Q. What led up to your taking him to the Handler box?

A. Well, I am telling you, I told him then that it wasn't necessary, it wouldn't be necessary for me to call my attorney, and he can come right down whenever he wished.

Q. What I am getting at, I am trying to find out why you took him to a box in which you now contend belongs solely to your wife. Was he investigating your wife? [fol. 893] He was investigating you, wasn't he?

A. He was.

Q. Then, why did you take him to what you claimed to be your wife's box?

A. I just took him down there, that's all. I had nothing to conceal.

Q. He didn't know of the box, did he, until you told him?

A. That's right.

Q. And, if it was your wife's property, why did you take him and show him somebody else's property?

A. I want to say this here. My wife's property—it is not altogether, I earned the money, and while she saved it and I say that it is her property, I think it is mine also.

Q. So do I, Mr. Friedberg. Now, this statement which I understand you said Mr. Nerny made, which he was asked about in cross examination, about taking a slice of the money. What significance do you attribute to that?

A. Well, for the moment I didn't think that that was proper for anyone to say. It had sort of a biased idea there, a biased intention. That's what I would get from the drift of that statement.

Q. Are you telling this jury that you have been persecuted in this case, Mr. Friedberg?

Mr. Sillman: I object. He hasn't said anything of the kind.

Q. Are you inferring it?

A. No, I haven't said anything like that, Colonel.

Q. Are you inferring it?

A. I am not inferring that.

[fol. 894] Q. Have you ever been mistreated in connection with this case, sir?

A. No, sir.

Q. Now, Mr. Friedberg, in relation to those real estate transactions. The first house, I believe you said, was 705 Bedford Place.

A. 705 and 705½ Bedford Place, that's right.

Q. That was purchased in the name of Frances Friedberg on March 5, 1924. The deed bears revenue stamps in the amount of \$3.00, which under the law would indicate a cash consideration of \$3,000, would it not?

A. I am not familiar with it.

Q. You heard me read the statute into evidence, I believe, earlier, that at that time the tax was one dollar on a thousand or actually fifty cents on each \$500?

A. Could you pay more and still have three stamps?

Q. Not without being in violation of the law. You know that quite well, don't you, sir?

A. No, I don't.

Q. You are not inferring that the person who sold to you did not comply with the law, are you?

A. No, I am not.

Q. You assumed a mortgage on that to Guaranty Title and Trust Company and you gave a mortgage to Homer Newman.

A. I didn't give the mortgage to Homer Newman.

Q. You assumed one.

A. No, I cleared it off.

Q. At the time you took it, there was a mortgage?

[fol. 895] A. I assumed it, yes.

Q. That was a two-story brick construction in 1922?

A. That's right.

Q. You disposed of that May 17, 1926, about two years after you purchased it?

A. That's right.

Q. To the Snyder's?

A. That's right.

Q. There were no revenue stamps on the deed. At the

time you sold it to the Snyder's Guaranty Title and Trust had a mortgage in the sum of \$8,000, didn't they?

A. Yes.

Q. Pardon me, it was in the original sum of \$8,000. The balance was \$6800; that's correct, isn't it?

A. I suppose that must be right, if the record indicates that. I believe so, yes.

Q. The deed actually shows that, and Mrs. Friedberg took back a second mortgage in the amount of \$2200. Now, Mr. Friedberg, you actually got no cash on that transaction, did you?

A. Had no cash on it?

Q. You got no cash out of that transaction, did you?

A. You mean between the Snyder's?

Q. That's right.

A. No.

Q. 700 Kimball Place, which I think, if I have these in [fol. 896] order, was your second acquisition. Title was acquired in the name of Mrs. Friedberg, May 18, 1926?

A. That's right.

Q. Which is the next day after the conveyance of the preceding house?

A. Yes.

Q. You got that from the Snyder's by trade?

A. That's right.

Q. So, the whole deal was a trade?

A. That's right.

Q. There were no revenue stamps there. You sold that in December 9, 1926 to the Lynch's, did you not?

A. That's right.

Q. No stamps there. Mrs. Friedberg took back a second mortgage in the amount of \$1850. Therefore, you received no cash from that transaction, did you?

A. Oh, yes, that was cash involved in that transaction.

Q. Why didn't you affix the revenue stamps?

A. Didn't have anything to do with that.

Q. That is the grantor's obligation, is it not?

A. I am not familiar with these terms that you are relating to me; grantor.

Q. You dealt quite a bit in real estate, sir: 701 Bedford

Place taken in the name of Frances Friedberg, acquired December 24, 1924. At that time it was an unimproved lot, wasn't it?

[fol. 897] A. That's right.

Q. You got it from the Newman's?

A. Right.

Q. It had a one dollar revenue stamp on it indicating approximately \$1000; in other words, between \$750 and \$1250 changed.

A. \$500.

Q. Do you remember what amount of money?

A. Yes, I think it was \$500.

Q. And, a mortgage was placed with Columbian Building and Loan, \$4250, is that right?

A. Yes, it was a construction loan.

Q. Mortgage was issued by Citizens Trust Company in the amount of \$5000 on May 4, 1928?

A. That's right.

Q. Erected a building in 1927?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. Then you transferred from Frances to your own name, 7/29/26, and then back to Frances' name in '27.

A. I don't recall.

Q. Isn't it a fact that on July 10, 1928 you sold it to the Kennaw's?

A. That's right.

Q. No revenue stamps.

Mr. Sillman: Now, if the Court please, I am going to offer [fol. 898] an objection. According to our notes, unless Mr. Windom wants to withdraw his stipulation, there were no revenue stamps in some of these years, and I have a little suspicion that these questions are directed at transactions at the time when no revenue stamps were required, not that the revenue stamp conclusively fixes the price received under any circumstance. Mr. Platt has looked at his notes. The stipulation was that under the law no revenue stamps were required from the years 1926 to 1932.

The Court: Counsel will be specific in his questions as to the date of the transactions.

Mr. Sillman: He has been specific. He has asked for 1928, and if there are no revenue stamps required then, why try to create some impression.

The Court: You gentlemen agreed, did you not, as to when the revenue stamps were necessary?

Col. Windom: If you will sit down a minute, we will straighten this out. I want to apologize to the Court and jury on that. Until Mr. Stillman mentioned it I had not refreshed my recollection. I will state that between 1926—the date I do not know—and June 21, 1932 no revenue stamps were required, and I am sorry I created any inference.

By Col. Windom:

Q. It was transferred to the Kennaw's. They assumed a mortgage. The original amount was \$5000 on that mortgage, was it not, Mr. Friedberg?

A. I presume it was.

Q. And when they assumed it, it had a balance of \$5506.41.

[fol. 899] A. Did it? I presume that was it.

Q. The mortgage actually went up instead of down.

A. I don't recall just what the figures were.

Q. They gave Mrs. Friedberg a mortgage in the amount of \$800, didn't they?

A. The second mortgage.

Q. Second mortgage?

A. I guess it was.

Q. That was one of the properties involved in foreclosure, was it not?

A. Yes, sir.

Q. Federal Home Mortgage Company vs. Frances and David Friedberg. Now, you said this morning, in answer to direct examination, that when you sold property like that, why, you just had no further interest in it. Where the mortgage was the same, you still had the primary liability, didn't you?

A. I did.

Q. And, you were sued and judgment was taken against you on your primary liability?

A. Yes, sir.

Q. Therefore, you had a very definite interest, didn't you?

A. I did have, yes, sir.

Q. There was a deficiency judgment taken in the amount of \$2220.95 in 1931 on that, was there not?

A. I suppose. I am not familiar with it.

Q. Mr. Friedberg, you built that house, did you not?
[fol. 900] A. One on Bedford, yes, 701.

Q. 701 Bedford?

A. That's right.

Q. Built in 1927. It was only four years old in 1931. Was it a good house?

A. Well, I wouldn't consider it so.

Q. It was on the tax duplicate for \$5540.

A. Well, you are familiar with the east end, and if you knew that property, I don't think you would regard it as having any——

Q. How far was this to that \$20,000 property?

A. Right next to it.

Q. Right next to a \$20,000 property?

A. Yes.

Q. It was a pretty valuable property?

A. No, it was not. It was a single brick house, and it was a very, very small house, and squeezed in on about a twenty foot lot, or a 25 foot lot, and I don't think it had the value.

Q. It was just a fair house. Why did you let it go by foreclosure when you had all of that cash available to save your investment?

A. I wasn't interested in that house any longer. I turned it over to responsible people, and I felt that they would take care of it, and they let it go and it got a little bit sour on me, and I thought I didn't want to throw any more good money after bad.

Q. It was just a sour lemon?

A. I think it was; it became that way.

[fol. 901] Q. Now, the 494-496 Sheldon. Title was taken in Mrs. Friedberg's name July 11, 1928 from the Kennaw's?

A. Yes.

Q. I assume that was involved in a trade on the 701 Bedford, is that right?

A. Yes, sir.

Q. Mortgage was assumed from the Buckeye State Building and loan in the original amount of \$5000, second mortgage in the amount of \$1500.

A. Yes.

Q. That building was constructed in 1923. In 1929, in April, you sold that to the H. L. Bryan and Company in trade for the Nelson Road property, did you not?

A. I believe that's the way it went. That's right.

Q. Now, you transferred that to Musselman's, I believe you said?

A. Yes, Musselman came into it.

Q. This morning on direct examination you said you transferred it to the Musselman's, and I quote, "that you were through with it."

A. I was what?

Q. Through with it.

A. Yes.

Q. Well, actually, you took it back in January 31, 1931, didn't you?

A. I don't recall whether I did or not on that. I don't know just how that went.

Q. Did you or didn't you?

A. I don't remember that.

Q. Isn't it a fact that you took it back January 31, 1931, [fol. 902] assumed a mortgage of \$5300 on it, that you then conveyed it to Hess in April, and that Hess conveyed it back to you just exactly ten days later in April?

A. You mean that's after I sold it to Musselman?

A. The chain of title is you, or shall I say Frances, Musselman, to David, to Hess, to David; isn't that right?

A. If it is there, it must be right.

Q. And, you said this morning that this transfer to Hess was purely for protection from your creditors, is that correct?

A. That's right.

Q. Were you attempting to defraud your creditors, Mr. Friedberg?

A. No, I was not.

Q. Why did you transfer it, then?

A. To protect my investment, my property, anything, my savings.

Q. Why didn't you protect the previous foreclosure, sir?

A. I don't think it was necessary at the time.

Q. All right, you were protecting yourself. But, this house was foreclosed. There was a foreclosure and then it was withdrawn, and a second foreclosure against you and Frances alone. Why didn't you, with all of your cash assets, protect yourself here?

A. Well, for the same reason, that the property did not justify taking it back.

Q. Well, let's see, sir. In 1931 you apparently figured it was worth \$5300 because you took it at that time and assumed that much of a mortgage on it, is that right?

A. I believe you will find that when I first owned that [fol. 903] property that the property was bringing forty or forty-five dollars a month a side, but at the time that it was trying to be forced back on me, I think the rentals had decreased considerably. I think you have the record there.

Q. Well, initially, sir, to go through the title, in 1928 you had mortgages when you owned it—when I say you, I use it loosely meaning Frances—\$6500 on that property. And, you got it back in 1931 and you assumed a mortgage of \$5300. Now, why do you say that in 1934 that property wasn't worth \$5500, the amount of the judgment?

A. Do you recall the time, Colonel, that 1934 was and 1933? There were some pretty bad times then, and I wasn't going to take that property back.

Q. Were they worse or better than '31?

A. Well, I think they were a little better then.

Q. Mr. Friedberg, isn't it a fact that you couldn't protect yourself?

A. I couldn't protect myself?

Q. Have you given an answer?

A. Why certainly I could have. I protected the investment, the savings that we had. As I say, again, I wasn't going to throw any bad money after good—or good money after bad.

Q. Mr. Friedberg, if you were throwing good money after bad, why did you ask Judge Cecil Randall of the Common

Pleas Court of this County to defer the sale of that property until a better market could be obtained?

A. I don't recall.

Q. Why were you that interested, if you were abandoning it?

A. At what time was this?

[fol. 904] Q. Whatever time, sir, you made the motion. You filed your motion on March 4, 1935, sir, one year before you had far in excess of \$50,000.

A. What was the motion, you say?

Q. I have read it a couple of times, but I will read it again.

"Now come the defendants, David Friedberg and Frances F. Friedberg, and represent to the Court that a judgment has been taken against them in the within action in the sum of Five Thousand Five hundred Thirty-three Dollars and Ninety-one Cents (\$5,533.91), together with interest and costs, and for foreclosure of the premises described in plaintiff's amended petition; that the premises have been appraised at Four Thousand Five Hundred Dollars (\$4,500) and have been ordered sold on the 9th day of March 1935."

And, if I may interject at that point, you could have bought that property at the appraised value, you could have taken it at the appraised value, could you not?

Mr. Sillman: If the Court please, I object to that line of questioning. "Could have bought."

Col. Windom: If somebody else overbid him it must have been a valuable property.

Q. I continue reading: "Defendants further represent to the Court that the property in question is a double house; that both sides are rented at a rental of Twenty Dollars (\$20.) per month; that a receiver has been appointed to collect said rents and is collecting same, and that the income therefrom is sufficient to pay current taxes and interest.

"Defendants further represent that said real estate is [fol. 905] worth in excess of the aforementioned judgment, but that if it is sold on the present depressed market it will bring far less than said judgment.

"Wherefore, defendant moves the Court for an order postponing the aforementioned sale of said premises, in

accordance with the provisions of Section 11588 of the Ohio General Code, known as the Best Act."

Now, Mr. Friedberg, you did think it was a valuable property?

A. No, I did not. You are familiar with Columbus.

Q. Why did you make this motion, then?

A. I really don't know. I don't remember it.

Q. Mr. Friedberg, if you had the assets you had, and when Judge Randall agreed to your proposition subject to your paying the taxes, \$10.00 advertising cost and \$10.00 a month for six months, on your own motion, why did you fail to do it, if you had the money?

A. We didn't feel as though we wanted the property any longer.

Q. Why did you make that motion, then, sir?

A. Well, we probably changed our minds after making it. I don't recall.

Q. You were just wasting the Court's time with that motion?

A. It was not my intention.

Q. Why did you take the time? The entry indicates that you were present in Court. Why did you take the time if you weren't interested?

A. I don't remember the occasion at all.

Q. On the North Nelson Road property title was taken in the name of Mrs. Friedberg on April 15, 1929. You acquired that from the Bryan Company. That was a part of trade for the previous property, was it not, sir?

[fol. 906] A. That's right.

Q. You assumed a mortgage on that of \$9000 to the Prudential Insurance Company. Then in October 1933 that mortgage was converted to a HOLC mortgage, wasn't it?

A. That's right.

Q. And, at that time you represented, did you not, to HOLC that you were in distressed financial condition?

Mr. Sillman: I object, if the Court please, and I am afraid—

The Court: Overruled. He may answer whether he did or did not.

Q. Didn't you represent that to HOLC?

A. I don't recall having represented being distressed. I don't remember saying that.

Q. Mr. Friedberg, I have read the law into evidence. Under the law you had to make that representation to get the loan, didn't you, sir?

A. I don't remember ever being asked that.

Q. You have no recollection about having made that loan?

A. I do.

Q. Why did you convert it from Prudential to HOLC?

A. Well, I thought it would be easier to dispose of.

Q. Why?

A. Because it had a lower rate of interest, for one reason.

Q. This house was constructed in 1927, was it not?

A. I believe so, I don't know.

[fol. 907] Q. You transferred that to Hess for, as you say, protection in 1931, didn't you, and then back to Mrs. Friedberg in 1931, but didn't record the deed for two years, isn't that correct?

A. I don't remember the incident on that.

Q. You did transfer it to Hess, didn't you?

A. Yes.

Q. And, he gave you a deed right back which you didn't record?

A. I don't know whether we did or didn't record it. I don't recall.

Q. That house was foreclosed, was it not?

A. Yes.

Q. That was the home in which you were living?

A. Yes.

Q. You moved out of that house, didn't you, and advertised it for rent?

A. Yes.

Q. And, as a result of those advertisements you were sued by the Dispatch Printing Company, weren't you?

A. If there was any suit in connection with the Dispatch Printing Company it wasn't on account of not being able to pay. There was some error or some other reason.

Q. Weren't you sued?

A. I think there was something about the Dispatch Printing Company.

Q. It is already in the record. Wasn't there?

A. I believe so.

Q. And the amount of the judgment taken against you by the Dispatch Printing Company was approximately—well, it was exactly \$13.76.

[fol. 908] A. Yes. They are still trying to collect it.

Mr. Sillman: What's the date of that judgment for \$13.76, Colonel?

Col. Windom: March 17, 1936.

Q. Executions were issued against you on that judgment on two occasions?

A. I believe so.

Q. You told the bailiff you had nothing, is that right?

Mr. Sillman: If the Court please, he hasn't testified—

Col. Windom: I am asking whether he told him. I am in cross examination and I am entitled to lead him.

Mr. Sillman: You do a lot of leading with a great deal of inference.

The Court: Just a moment. Are you objecting?

Mr. Sillman: Yes.

The Court: Sustained.

Q. Now, Mr. Friedberg, will you tell us why did you permit the loss of your home by foreclosure?

A. I was no longer interested in it.

Q. You just weren't interested in owning your own home?

A. No.

Q. Did you have any interest in your children at that time?

A. Well, it is just one of the reasons why I did have an interest in the children is why I let it go.

Q. Go ahead and explain that answer.

[fol. 909] A. Well, as I said, Mrs. Friedberg testified about the portable school there, which wasn't so very good, and another very good reason was that the plumbing in that building wasn't very good. The plumbing was very bad in that building. It was a good building but the plumbing was bad, terrifically bad, and it would require a lot of money to fix it.

Q. Let's take these items one at a time. You moved from there to Lilley Avenue. Just tell the jury how close a school is to that Lilley Avenue address.

A. You know that Elaine was at junior high school age at the time at Lilley Avenue, and it wasn't much effort for a high school age to travel a distance, whereas they were very small children during the time we lived at Nelson Road.

Q. I know that, but then why has Mrs. Friedberg indicated she was of grammar school age and referred to Fair Avenue school. It was a grammar school.

Mr. Sillman: If the Court please, I am going to object. She didn't mention anything of the kind.

Col. Windom: She said Fair Avenue school.

The Court: Yes, sustained.

Q. Isn't it a fact that Mrs. Friedberg referred to the Fair Avenue school in relation to Elaine?

A. I don't know who she referred to. She did mention Fair Avenue school, but I don't know who she referred to at the time.

Q. That had nothing to do with the Friedberg family, did it?

A. Yes, it did.

[fol. 910] Q. At that time?

A. What time are you referring to?

Q. At the time you lost your home on Nelson Road?

A. What about it? I don't understand.

Q. You have given me two reasons for letting this home go. One, that you wanted to be nearer a school. You moved to Lilley Avenue, and I am asking you what school you were nearer.

A. I tell you, I don't know the distances between these schools, but that was one of the reasons. I know that the portable school was very objectionable, because it was unbearable to be there in the summertime and in winter they froze.

Q. Was Elaine in High school?

A. At the time, at 131 North Nelson?

Q. When you lost it.

A. No, I don't think she was.

Q. Where was she?

A. She was in grade school, grammar school.

Q. Which one?

A. I don't recall that.

Q. Where was it located?

A. The Fair Avenue school? Now, I don't know what school you are referring to, and as a matter of fact, I don't remember just what school.

Q. I am trying to find out what grade school your children went to, Mr. Friedberg.

A. I don't remember that, Colonel.

[fol. 911] Q. What junior high school did they go to?

A. I don't remember that, either.

Q. What high school did they go to?

A. The Bexley High.

Q. When did you ever live in Bexley?

A. When we lived at 208 Stanwood.

Q. And, how long was that?

A. Approximately two years, I believe. I am not certain there just how long, maybe a little less time than that. I just don't recall.

Q. Those two reasons are the only reasons that you can assign for letting your home go by foreclosure, is that right, sir?

A. That was it, yes.

Q. Now, 204 Stanwood, when you acquired that, that was unimproved, was it not?

A. That's right.

Q. You acquired it in 1926 and took title in Mrs. Friedberg's name?

A. Yes.

Q. It had a valuation at that time of \$620, is that correct?

A. I believe so. That was on the tax duplicate.

Q. Do you remember what you paid for it, sir?

A. No, that came in with the deal. I just don't recall, it came in with the deal.

Q. That was transferred to Hess, and is that one of those protective transfers, sir?

A. It presumably was.

[fol. 912] Q. And back to Mrs. Friedberg, then to George

Zimmerman. Is that another one of those protective transfers?

A. Evidently.

Q. The one to Hess was 1931, and this was a transfer right back to Mrs. Friedberg, which wasn't recorded until '34, and then simultaneously with that there was a transfer to Zimmerman, is that correct?

A. Yes, if it is on the record.

Q. Then it was transferred to Robins and then to G. D. Segal in 1939?

A. That's right.

Q. Who built the building on this property?

A. The builder?

Q. Who was the owner at the time?

A. I was the owner.

Q. In other words, you were the owner-constructor and J. C. Robins built it for you?

A. Yes, sir, he was the contractor.

Q. What was the reason that this property was not retained in your name, if you built the property on it, sir?

A. Well, Mr. Robins felt that by having it in his name he could get the construction loan, a more substantial loan, for the type of property we wanted to build.

Q. And, why was it necessary to get a construction loan, sir, if you had all of the cash assets that you claim?

A. For the same reason, Colonel, that I believed in putting mortgages on.

[fol. 913] Q. You are an advocate of mortgages on real estate, is that right?

A. Yes, I am.

Q. 208 Stanwood, that was another unimproved lot, was it not?

A. Yes, sir.

Q. And that was acquired from Samuel Hillman, transferred to Hess. Was that another one of those protective transfers?

A. Yes, sir.

Q. Back to Frances Friedberg simultaneously, and then to Georgy Zimmerman?

A. Yes.

A. That was all handled in a group.

Q. And then to yourself, and then from yourself to Frances.

A. Yes, sir.

Q. You sold that to the Zuckerman's?

A. That's right.

Q. There is an internal revenue stamp on that one of \$1.55 indicating a price of pretty close to \$2000 cash, is that right?

A. That's right.

Q. Mr. Friedberg, you subsequently settled the deficiency judgment on the HOLC foreclosure for \$100, didn't you?

A. Yes, my attorney handled that.

Q. And, what year was that?

A. I just don't recall the year.

Q. That was in late 1939, was it not?

[fol. 914] A. Yes, sir.

Q. What was the basis of that settlement, sir?

A. You mean the amount of settlement?

Q. That's right.

A. It was just a small amount; \$100, I believe. My attorney handled that.

Q. And that was in 1939?

A. Yes, sir.

Q. Three years after you say that you had far in excess of \$50,000 in cash, is that right, sir?

A. Yes.

Q. Isn't it a fact that you represented to the Home Owners Loan Corporation that you were practically destitute?

Mr. Sillman: I object, if the Court please, and I am about to place a motion before the Court.

Col. Windem: You can make ten motions.

The Court: State your objection.

Mr. Sillman: If this evidence, and it quite evidently is, is an attempt on the part of the District Attorney to indirectly produce before this jury that which the Court has ruled as improper, then I think we ought to stick by the rules of fair play.

The Court: I think he may ask the witness as to what he

represented when he secured this loan. I don't think it is a parallel situation to the exhibits.

Mr. Sillman: Your Honor, I didn't object to that. He is [fol. 915] not asking that now. He is not asking what he represented when he got the loan.

The Court: Read the question.

(The question was read.)

By Col. Windom:

Q. Isn't it a fact?

A. I don't recall saying I was destitute.

Q. What was your answer?

A. I don't recall saying anything like that.

Q. You don't recall saying anything like that?

A. No.

Q. You did make representations that you could not pay any more than \$100, did you not.

Mr. Sillman: Now, if the Court please, again, I object, and I want to place a motion, if the Court please, at the conclusion of this recess period.

The Court: You may make your motion.

Read the question.

(Question was read.)

The Court: He may answer. Overruled.

Mr. Sillman: To whom?

Q. Didn't you make those representations, sir, to HOLC?

A. My attorney took care of that.

Q. Didn't you have your attorney make such representations on your behalf?

[fol. 916] Mr. Sillman: Object.

The Court: Yes.

Q. My question is, and don't answer it so it may raise the issues squarely.

The Court: Sustained.

Col. Windom: May I state the question?

The Court: You have already stated the question.

Col. Windom: I will ask it again.

Q. Did you not direct your attorney to make such representations to the Home Owners Loan Corporation?

Mr. Sillman: Now, I will object to that.

The Court: Sustained.

Mr. Sillman: And I ask the Court——

The Court: Now, just a moment, the objection is sustained.

Mr. Sillman: But, I ask for an instruction. I ask the Court, in the interest of fairness and in the interest of fair play, to instruct the jury that it is their duty to disregard entirely any inference that may come out of that improper question. Your Honor has ruled on that subject matter, and we are abiding by the rules of the game, and I ask your Honor in fairness to instruct the jury.

The Court: The Court has sustained the objection to the question. That is the ruling of the Court and the Court will instruct the jury to disregard the question and pay no attention to it whatever.

Col. Windom: May I be heard just a second? I think the Court is overlooking something. We had much testimony [fol. 917] in the absence of the jury and that I am disregarding completely. If my recollection is correct, and I am not sure that it is correct, Mr. Robert Mellman testified in the presence of the jury relating to this settlement, and Mr. Mellman testified as to what certain instructions were.

Mr. Sillman: Now, if the Court please, here is Mr. Windom testifying, or attempting to testify to that what Your Honor ruled out and which you have just told the jury to disregard.

The Court: There is no necessity for further argument. The Court has ruled.

Col. Windom: If my statement is correct, and I am not sure, it would require the stenographer to review the record, and rather than waste time, I would like to have her review it before Monday. I would like to go into this again, if I am correct.

The Court: You may review the record between now and Monday.

By Col. Windom:

Q. Now, after all of this, Mr. Friedberg, isn't it a fact that you did represent to HOLC that you were destitute?

Mr. Sillman: I object again, if the Court please.

The Court: I think you have pursued that line of questioning far enough. The Court is sustaining the objection. I don't think counsel has a right to assume in his questions that he was destitute.

Q. What did you represent to them, Mr. Friedberg?

Mr. Sillman: Now, if the Court please——

[fol. 918] The Court: The Court is not foreclosing the District Attorney from inquiring about any representations this gentlemen made.

Mr. Sillman: To whom?

The Court: To the HOLC.

Mr. Sillman: But, he doesn't finish his question.

Q. What representations did you make to HOLC?

A. I just don't recall what it was.

Q. They were sufficient, were they not, to settle that deficiency judgment for \$100?

Mr. Sillman: I object, if the Court please. There hasn't been any evidence of any representations ever made by this witness to HOLC.

The Court: Your objection is sustained.

The Court doesn't care for a speech.

Q. Why did you settle that deficiency judgment for \$100?

A. Why, I tried to settle it as cheaply as I possibly could.

Q. Why was it necessary to settle it at all?

A. Well, to get rid of the deficiency judgment.

Q. You had far in excess of \$50,000. Why didn't you pay it?

A. I was no longer interested in the property, Colonel.

Q. It was an honest obligation, wasn't it, Mr. Friedberg?

A. I don't know what you mean, honest obligation. Yes,

it was an honest obligation. Certainly, it was an honest obligation. The property was there.

Q. This was a deficiency judgment, was it not?
[fol. 919] A. Yes.

Q. Why did you have to settle the deficiency judgment?

A. Because I no longer cared for the property.

Q. Tell me, again, please, and I am not sure because there has been some confusion in the pronunciation of these gentlemen's names, is it Mr. Weiss who was once in partnership with you?

A. Mr. Weiss.

Q. Why did you borrow that \$500 from him?

A. I explained that I felt that I needed the man. I just didn't have the full courage of going into this business unless I had some help from Mr. Weiss, because he was the man, the key man in this business so far as the cutting was concerned, and I gave him an opportunity. And I gave him an opportunity, I wanted to give him an opportunity that if he felt at any time he wanted to come in the business he could invest the \$500, and it was his refusal whether he wanted to stay or quit. At the time I felt he would be there.

Q. Then, this was just a scheme to get Weiss to work for you?

A. I wouldn't exactly say a scheme. Why, he was with me for twenty years, and I felt—I got along very nicely with him, a gentleman, a man you could cooperate with, and I would have liked to have him in the business.

Q. Why did you have to borrow some money to keep him?

A. I felt I wanted him there. I felt if there was some link it might be an encouragement for him to stay.

Q. Mr. Friedberg, for a man making as much money as [fol. 920] you claim to have made, couldn't you pay him enough without borrowing?

A. He didn't care to work regularly. It wasn't the idea of keeping him. He was getting pretty well up in years, and whether he wanted to stay or not, I didn't want to impose on him.

Q. He is dead now, is he not?

A. I don't know. I haven't the slightest idea. I haven't heard from him.

Q. Isn't it a fact that Mr. Weiss is dead?

A. I don't know.

Q. You paid that \$500 back \$50 a year for several years, didn't you?

A. We could have cleaned that up—we didn't need that money. I am telling you just the reason.

Q. What did you do with it after you got it?

A. We put it in the bank.

Q. Now, you say you paid cash for this Pontiac to put a mortgage on it to protect yourself?

A. That's right.

Q. Again to defeat any creditors?

A. I did it to protect my interest.

Q. Why would a solvent man need to protect himself, Mr. Friedberg?

A. At all costs we intended to protect our savings.

Q. What might have occurred, Mr. Friedberg, to impair your savings?

A. Just those things that might have developed.

Q. What might have developed?

[fol. 921] A. For instance, in trading property, where we gave this property in good faith to people. Why shouldn't they take care of their obligations? We know they were responsible people. It was a fair deal.

Q. Assume you had a complete liability on all that property, which you didn't have because you merely traded one piece for another, wasn't that an infinitesimally small amount in comparison to \$50,000?

A. It is the small amounts that made that, the small amounts that we saved.

Q. You considered it necessary to protect yourself on an automobile that only cost \$600?

A. Colonel, you wouldn't take back—

Q. Is that right?

A. Yes, sir.

Q. That was the same as those transfers to Hess and Zimmerman?

A. Yes, sir.

Col. Windom: Your Honor, I will have to have a recess.

The Court: You may have it until Monday morning. Ladies and gentlemen, due to weather conditions the Court intends to adjourn a little early. Remember to follow the instructions of the Court heretofore given you. You will return here Monday morning at ten o'clock.

MONDAY MORNING SESSION

January 7, 1952

DAVID FRIEDBERG, resuming the stand, testified further [fol. 922] as follows:

Cross examination (Cont'd.).

By Col. Windom:

Q. Mr. Friedberg, I believe you said that ready-made suits did not bear any price tags.

A. No.

Q. And, by that you mean that on the suit itself you had no price display on it?

A. That's right.

Q. Why didn't you have a price display on it, sir?

A. We didn't have any displayed.

Q. Your custom, then, was it not, was to charge as much as the traffic would bear on those ready-made suits?

Mr. Sillman: Object, if the Court please.

The Court: Sustained.

Q. Why did you do that?

A. Well, when you take garments of that kind, usually you get what you can for them.

Q. What's that got to do with the question, Mr. Friedberg?

A. Well, I think that that's—

Q. Why didn't you put a price on them?

A. We had no particular price on them.

Q. Charged whatever you could get out of them?

A. Whatever we could get.

Q. Now, Mr. Friedberg, you said that in 1945, '46 and '47,

[fol. 923] that the sale of ready-made suits increased quite appreciably, is that correct?

A. That's right.

Q. And if that is correct, sir, and you have given your figures of that increase to the jury, how do you reconcile that with your statement that your income from miscellaneous sales, and I quote, "was very insignificant"?

A. I didn't say—now, that's rather a broad question there. Miscellaneous items include the cleaning and pressing and repairing. That was insignificant. That was part of the miscellaneous.

Q. Miscellaneous also includes ready-made suits, doesn't it, according to you?

A. Yes, but I didn't say that the entire miscellaneous was insignificant.

Q. Miscellaneous income, then, was very considerable, wasn't it?

A. Yes, it was adequate.

Q. Now, this policy that you were talking to Mr. Art Hall about, what were you after when you talked to Hall?

A. Well, from information I gathered, when anybody wanted to invest a large sum of money for investment purposes, really—that's what I considered—I thought an annuity was one where you would buy a certain amount of insurance, whatever it was, you would pay for it, and that it would be something that they would apportion over certain time, that they would repay you, and of course it would be interest-bearing, and I thought at the end, when one passed away, the estate would get the balance of the money. That was my impression of what an annuity was.

Q. If I understand what your desires were at that time, [fol. 924] it was to pay a lump sum?

A. That's right.

Q. For some type of insurance which would give yourself an income?

A. Well, yes, later on.

Q. And, then, any remainder of the policy to your beneficiaries under your will or to your estate, is that correct?

A. That's what I figured it was.

Q. What did Mr. Hall tell you about it?

A. He said that isn't it at all. He advised against buying it.

Q. Did he tell you he couldn't furnish that type of policy?

A. Didn't say anything—just advised against buying it, and we didn't go into any lengthy conversation about it because he cautioned against it.

Q. Did he or did he not tell you that he could furnish that type of policy?

A. He didn't say at all.

Q. He just advised against your investing \$50,000 in his company?

A. That's right.

Mr. Sillman: Object, if the Court please. The witness didn't say in his company. He said against this kind of investment.

The Court: Overruled.

Q. Mr. Friedberg, you said that you never failed to file an income tax return where the same was due.

A. That's right.

Q. Can I conclude from that, sir, that in those years [fol. 925] where the records show you did not file an income tax return, that your income, with the exemptions, was less than the amount which would have required a return?

A. That I wouldn't recall.

Q. Well, isn't it true that you are saying that you filed a return every year in which you made sufficient income to require a return under the law?

A. As far as I can remember, yes, sir.

Q. Now, if you didn't file an income tax return in a given year, then your income was of an equal or lesser amount than the minimum, was it not?

A. All I know is I—I don't follow you on that. All I know is, if there was, at the time, a conclusion where there was a taxable amount, I would file a return.

Q. My point is this, if you did not file a return, isn't it true, then, that your income was insufficient to require a return?

A. You mean after the exemptions were made?

Q. I am taking all of that into account.

A. Yes.

Q. You said that you never failed to pay any tax that was due.

A. If there was any tax due.

Q. That would indicate that it was your position in the years in which no tax was paid that your income was such that none was due?

A. That's right.

Q. Mr. Friedberg, your location immediately across the street from the bus station does in fact give you a large [fol. 926] transient business, doesn't it?

A. No, I wouldn't say. It gives some transient because we are not right—directly across the entrance. It is sort of an exit there, where the baggage is taken in. And if you are familiar with that particular location there, as you say, you know on that side of the street where we are located how many stores are there besides myself? On the other side of the street, how many stores are there on the other side of the street? Taking south of that, how many stores are there on the east side of that street? That's going from Town to State. And take from Town to State on the west side of the street, how many stores are there there?

Q. What does the number of stores have to do with whether or not you have a transient business?

A. We have some transient business, naturally, from that bus station.

Q. You stated that to Mr. Sillman. You stated you had a considerable repair business because of the proximity of the bus station.

A. No.

Mr. Sillman: I object. The witness never made such a statement.

The Court: Sustained.

Q. Did you not say to Mr. Sillman that you had a considerable transient repair business because of the proximity of the bus station?

A. I did not.

Q. Mr. Friedberg, you have taken the position in direct examination, if I understand you correctly, that your

[fol. 927] records and your work sheets reflect your true income?

A. I wouldn't say that the work sheets do.

Q. Well, is there any place in your records where the totals for any given year are reflected?

A. In the cash book.

Q. Sir?

A. In the cash book.

Q. Will you take the cash book and point out where you have totaled anything.

A. Where I have totaled anything?

Q. Yes, sir, where anyone has totaled anything.

A. I think that Mrs. Friedberg totaled some of the figures.

Q. Can you point it out, sir, speaking at the end of the year now, where, for example, in preparation of tax returns you would have totaled the columns and arrived at total figures.

A. She would total that on an adding machine.

Q. Why wouldn't she enter it in your permanent records?

A. That I don't know.

Q. Did she staple the adding machine tapes to the permanent records?

A. We did at the time that I was making up the figures for the income tax, but I don't know whether I kept them or not. I just jotted them down on those figures I made up for my accountants, and I didn't hold on to the tapes.

Q. It is a fact, is it not, that in your records no totals [fol. 928] appear at the conclusion of any year's business?

A. That I don't know. I don't remember whether there is or not any, but I know that they are taken from a tape.

Q. Mr. Friedberg, is there or isn't there?

A. I don't know. I can't tell you offhand.

Q. What record might it be in so that I may hand it to you, if there is?

A. I wouldn't know if there is any record.

Q. There is none you know of I could give you so that you could point it out?

A. No, sir.

Q. Let me get these names straightened out. How do we pronounce the accountant's name?

A. Mr. Weiss.

Q. When did Mr. Weiss start the audit that you started to tell Mr. Sillman about. Sometime in 1947. When did he actually start that audit?

A. I wouldn't know. That was after he got those records back from the agents.

Q. And, when did he finish the audit?

A. That I don't remember.

Q. Why did you have that audit made, Mr. Friedberg?

A. Well, I intended to have that audit made before the agents got the records, and Mr. Weiss asked me to send the books up there. In the meantime the agents came in for those 1947 records and says, "We would like to have those records." So, I probably should have done as my [fol. 929] accountant asked me to, but I gave it to them, very freely. They had access to anything that there was there.

Q. Mr. Friedberg, when you were Secretary of Buckeye Tailoring as a corporation, you had an audit made every year, didn't you?

A. Yes, I believe we did.

Q. Why didn't you continue that practice after the business became an individual proprietorship?

A. Well, I thought that we were able to take care of it and didn't require so much—I tried to follow up some of the routine that was used by the accountant, and I think we were able to take care of it, or as much as there was. It was just a new business started in there.

Q. You were thoroughly cognizant of the necessity for auditing the corporation's books, were you not?

A. Well, I was cognizant of that because I felt that there were others in the business. It was a corporation and naturally the others were entitled to some explanation for records, and so forth.

Q. Was there any less reason to audit your own business, sir?

A. Well, I didn't think it was so necessary in the beginning there, in the business. Just a small business to start with.

Q. Mr. Friedberg, you told Mr. Sillman that you had gone to New York, for example, in 1944 to purchase woollens, that at that time woollens were allocated?

A. That's right.

Q. Did you purchase those on a priority or on what is commonly referred to as the black market?

[fol. 930] A. I didn't consider it black market. I didn't have any priority.

Q. And, were you required to pay higher than ceiling prices, sir?

A. Well, I didn't know what the ceiling prices were at the time. I paid whatever I could because I needed the merchandise and was desperate in getting it. I had to get it.

Q. Do I understand you to say that you didn't know what the ceiling prices were on woollens in the tailoring business?

A. I may have known; familiar with some of them.

Q. You were familiar with all of them, weren't you?

A. Well, the duties that I had there, running around, it was a one-man business. After all, I couldn't go to work and study all these different various prices. It was practically humanly impossible.

Q. It is a fact, is it not, that you did pay over ceiling prices for those woollens?

A. I don't doubt but what I did, sure.

Q. Now, did you charge over ceiling prices on the woollens you sold, sir?

A. I don't think so.

Q. You mean to tell this Court and jury that you absorbed everything between the over ceiling retail price and your excess cost in buying those on the open or black market?

A. Yes, sir.

Q. What percentage profit do you operate on, sir?

A. Well, I have never given it any particular thought about the percentage of profit.

[fol. 931] Q. It is very considerable, then, isn't it?

A. No, no. The profit that we have is very moderate. I have been very conscientious about any charges in the retail business.

Q. How could you absorb an excess price over ceiling and yet sell at ceiling prices?

A. Colonel, I am a very close buyer and I didn't—if I did overpay I didn't pay too much in excess, I assure you.

Q. Did you charge just a little bit in excess, Mr. Friedberg?

A. No, sir, no, sir. I am always very conscientious about what I charge.

Q. Is it to be implied, sir, that your ethics in 1944 were much better than when your ready-made suit business started to boom and you charged whatever you could get?

A. My ethics have always been the same.

Q. You do concede, sir, that you paid over ceiling prices on your purchases of woolens?

A. Perhaps so. You see, it was a rather confusing market at that time. I don't know—you would have to be an expert, really, an expert on knowing whether you did pay any particular over, and according to my particular ability I didn't think that I overpaid too much.

Q. Now, if you didn't know what the ceiling prices were, how do you know that you didn't overcharge on ceiling prices?

A. I am generally familiar with market prices, and as I say, it is just like some holocaust, don't you know. You sit back and survey things and pick out your mistakes, what you have done, and what you shouldn't have done. [fol. 932] That particular time was rather a lot of confusion in buying. All I was interested in was getting merchandise.

Q. There was considerable profit in that merchandise, wasn't there?

A. Beg pardon?

Q. There was considerable profit in that merchandise, wasn't there?

A. To who?

Q. To the user?

A. Absolutely not.

Q. What was your markup?

A. Well, to give you an idea, if you want markups, I can give you a fairly good idea of what it is.

Q. I want to know what your average percentage markup was in 1944.

A. Are you talking about retail now, or wholesale?

Q. Give me both of them.

A. You take, for instance, the wholesale business. In the cut, trim and make business, of course, as I explained to you what that was—if you would make about a dollar a suit on that, that would be a big profit. On our tailored to trade suits, that's where we purchase the material to wholesale—that's the dealers—if we have made a profit of about three to four dollars on that there, that would be a large profit, and in our retail business, I would say that if we made an average profit of about ten to twelve dollars a suit I could consider that very good.

(The Court recesses to take a phone call.)

The Court: Go ahead.

A. As I said, as to my made to measure suits, in the retail [fol. 933] business, ten to twelve dollars profit I thought was good.

Now, as to the retail ready made, those were handled much on the same basis as the tailored to trade prices, where two dollars profit or a three-dollar profit we thought was good for a quick turnover. Sometimes we took a loss on those suits where they were not the right kind.

Q. I understand this is a two to three dollar profit on a complete suit, sir?

A. This is an uncalled for, ready made suit. I think that's good. It is the same as getting a profit on the tailored to trade.

Q. Mr. Friedberg, do you mean to tell me that you can stay in business at a profit of two to three dollars on that type of suit?

A. Colonel, I regulated my salary according to the business I was doing.

Q. Well, you answer it yes or no and then explain, please.

A. Yes, I can. I am staying in business.

Q. Now, you may explain as long as you want to. Why do you say that?

A. Because it is a truth.

Q. What's the difference between the two types of business that would justify a profit of ten to twelve dollars—is that what you said?

A. Yes.

Q. —on one, and two to three on the other?

A. Well, one was a custom tailored suit. It was a made to order suit, and the other was a ready made suit.

Q. Somebody has to tailor a ready made suit. Who tailored it?

[fol. 934] A. Well, the tailors tailored it.

Q. You did, didn't you?

A. No, we have never finished any garments.

Q. You did exactly the same work on the ready makes as you did on the made to measure suits you told Mr. Sillman.

A. Yes, but they were made a little different, or slightly cheaper materials, and some of them, of course, we get a little bit more, but an average of about two to three dollars on those was a good profit.

Q. Well, to drop from ten to twelve to an average of two to three, it must have been very poor material indeed, must it not?

A. No, I wouldn't say that. Now, you take the United Woolen Mills. You can read every day where they have suits from twenty-five to thirty dollars.

Col. Windom: Move to strike the answer.

Mr. Sillman: He is asking how it is possible for him to stay in business.

Col. Windom: For him, not the United Woolen Mills.

Mr. Sillman: If anybody else can sell for those prices, he can.

The Court: The answer is not responsive to the question. The Court will order it stricken.

Q. Now, isn't it a fact that on Mr. Clager's first interview with you in relation to your markup, you told him that you were buying on the over ceiling market in New York, and that you were paying \$7.50 for cloth on which the [fol. 935] correct price was \$3.50, sir?

A. I don't recall making any reference to that.

Q. Did you or didn't you say that; yes or no?

A. I don't recall ever saying anything like that, making any specific remarks of that kind.

Q. Is your answer no?

A. No.

Q. If I understood yourself and Mrs. Friedberg correctly, you said that you always kept money in the cedar chest?

A. Yes.

Q. How much did you have at the end of 1947?

A. I don't recall. Mrs. Friedberg took care of that.

Q. You did have some money in it, then?

A. I don't believe we did.

Q. Now, which is right, that you did or that you didn't?

A. I don't think so.

Q. Then your previous answers that you always had money in the cedar chest are incorrect, sir?

A. No, sir.

Q. Which is right?

A. I didn't say that we had any money in the cedar chest in 1947.

Q. You said that you always did.

A. As a matter of fact, Colonel, I never went to the cedar chest.

Q. You heard Mrs. Friedberg testify. You were in the court room the entire time, were you not?

[fol. 936] A. I did.

Q. Did you or didn't you have money in that cedar chest at the end of 1947?

A. You are asking something I am unfamiliar with.

Q. If Mrs. Friedberg said you always had money in the cedar chest, that would have included the end of 1947?

A. No, I don't think so, not necessarily.

Q. Why wouldn't it?

A. I don't know.

Q. You said that you were ready and willing to invest fifty to sixty thousand dollars in the business in 1938 to expand, if I understood correctly.

A. Yes, sir.

Q. And, was Mrs. Friedberg willing to let you have that amount of money, sir?

A. I don't remember ever discussing it with Mrs. Fried-

berg, but if she thought that I felt substantially and reasonably sure that it would be all right, why, I don't think she would object to letting me have the money. I don't know what her feelings would have been at the time, frankly.

Q. I may assume, then, that you could actually have invested fifty to sixty thousand dollars and that Mrs. Friedberg would have gone along?

A. I think so.

Q. Why, then, wouldn't she advance \$10,000 in 1941, or 1942 or 1943 to establish your credit on a sound basis?

A. In the first place, I didn't go into the business on the scale that I intended to when I talked to Mr. Weiss about investing that amount, and furthermore, Mrs. [fol. 937] Friedberg showed some inclination when she advanced money right along, and when she felt that she had—she was keeping the books and she knew she could take back whatever she invested, and I think she did invest. What's the difference if she invested \$10,000 right away, or whether she invested the money as we needed it to pay the bills? And, for your information, Colonel, we have a good credit, and my earnings were based on, first, pay the creditors, in my business.

Q. Haven't you testified, and hasn't she testified, that your credit was poor in 1941, '42 and '43?

A. Well, we had just taken over the business.

Q. Yes or no.

A. Yes, the credit was poor in '41.

Q. All right. Why was she unwilling, if you had all that money, to invest, say, just arbitrarily \$10,000 to improve that credit?

A. Our credit wasn't bad. It's the former corporation that I am talking about. That credit was bad.

Q. Wouldn't she have been willing to invest just one-sixth of what you were going to put in the expanded business, to improve that, sir?

A. Colonel, she wasn't very anxious for me to keep on in the business.

Q. Mr. Friedberg, she said, did she not, that she had no love for the entire tailoring business?

A. Right. She didn't.

Q. That business which made you \$100,000 net profit in the Handler safety deposit box?

[fol. 938] A. What business are you talking about?

Q. Any tailoring business that you were ever in.

A. What you found in the box or the agents found in the box was my—our entire life's savings.

Q. The first word "my" was correct, wasn't it?

A. Well, it was both of us, mine and hers.

Q. Now, Mr. Friedberg, you were in involuntary default on the payments on your home on Nelson Road when you applied for the HOLC loan, weren't you?

A. Yes.

Q. That was involuntary, not of your own making.

A. I don't just know what you are referring to.

Q. In other words, you could not keep up your payments; that's correct?

A. No, sir, it is wrong. We could have kept up our payments.

Q. You could have?

A. Yes.

Q. Then, do I understand that you misrepresented the facts to HOLC to get that loan?

Mr. Sillman: Object, if the Court please.

The Court: Overruled.

A. There was no misrepresentation at all.

Q. You heard me read the law into the record in this court. The Act of Congress requires, sir, that you be in involuntary default.

A. I don't know anything about that.

[fol. 939] Q. You couldn't keep up your payments, could you?

A. Why, certainly, we could.

Q. Then you misrepresented the facts to HOLC?

Mr. Sillman: Objection.

The Court: Overruled.

A. There was no intention on my part to misrepresent anything.

Q. If what you are saying was true, then you did misrepresent it.

A. No, sir, I did not.

Q. Now, Mr. Friedberg, let's go back to the year 1923. That was the year you came to Columbus, wasn't it?

A. Yes, I believe it was.

Q. An examination of the statutes show that the exemption for a married person in 1923 was \$2500. The tax rate for that year was 4 per cent up to \$4000. You paid \$20.82, did you not, as shown by the records here?

A. I believe so.

Q. That would give you an income, then, of \$3187.25.

Mr. Sillman: Object, if the Court please. It doesn't take into consideration the deductions that a taxpayer is entitled to. It doesn't take into consideration—

The Court: Sustained. Are you referring to gross income or net income? Objection sustained to the question as is.

Col. Windom: I can get at it in one of two ways. One would require that Your Honor take judicial notice of the statutes, and the other is to introduce the statutes.

[fol. 940] Mr. Sillman: You don't have to introduce that.

Col. Windom: There wasn't any dependency deduction.

Mr. Sillman: My dear sir, the Court will take judicial notice of the fact that the taxpayer has always had deductions, and I am not showing dependency or anything else.

Col. Windom: Is that correct?

Mr. Sillman: Of course, that's correct.

Col. Windom: All right.

Mr. Sillman: Now, you can stick to that.

Col. Windom: What dependency credits did he have in 1923, then?

Mr. Sillman: You stated credits. Don't ask me that.

By Col. Windom:

Q. Did you have any children in 1923?

A. No, sir.

Col. Windom: May I ask the same question over, Your Honor.

Mr. Sillman: If the Court please, I am not talking about children and he knows I am not.

The Court: Just a moment. If you will quit talking to each other and address your remarks to the Court, you will get along better. Make your objections to the question and the Court will rule. There is no question pending at this time, is there? You gentlemen are not in disagreement as to the exemptions?

Mr. Sillman: Not at all.

The Court: When you refer to an income, it could be a [fol. 941] gross income and it could be a net income.

Col. Windom: I have given, and Mr. Sillman has the tabulation and knows I am giving the rate on net income.

The Court: You are not in disagreement?

Mr. Sillman: Not at all. What we are in disagreement about is the fact that the amount of tax that a taxpayer pays does not indicate what his deductions are, for example.

The Court: No, you do not need to argue that question. The Court is familiar with what it indicates.

Now, what is your question, Col. Windom?

Col. Windom: Let me ask a new one.

Q. Mr. Friedberg, it is a fact, is it not, that in 1923 your taxable income, that is, your net income, was approximately \$3200? That is correct, is it not?

A. I don't recall that, Colonel.

Q. Well, Mr. Friedberg, the statute shows that the normal tax rate on net income was 4 per cent on figures up to \$4000. The record reflects, including your own Exhibit 1, that you paid \$20.62 tax that year. By a mathematical calculation, I am asking you if it is not correct that your net income for 1923 was slightly less than \$3200?

Mr. Sillman: Now, no allowance is made for the deductions. Object.

The Court: Counsel is referring to the net income after deductions are made. Did he file a return in that year?

Col. Windom: Yes, sir.

[fol. 942] The Court: Is the return in evidence?

Col. Windom: No, sir, those returns were long since destroyed. All we have is the recapitulation to show the tax paid.

The Court: He may answer if he knows. The objection is overruled.

A. I can't recall that. I don't know what deductions there were at that time.

Q. I am talking about net income.

A. I don't recall that. That's so far back. It is getting back into my——

Q. In 1924, sir, the tax rate by law was 2 per cent on amounts up to \$4000; that is, net income. You paid in that year \$31.13. By a simple mathematical calculation, it is correct, is it not, that your net income would have been \$4056.50 in that year?

Mr. Sillman: I object, again.

The Court: He may answer if he knows.

Mr. Sillman: I object on the ground the questioner is not even reading the table correctly. There is a 25 per cent credit that he is not taking into consideration, an earned income credit. But, aside from that, that's all technical income tax law. I say——

The Court: What is the purpose of this?

Col. Windom: I want to show what he made over these years.

The Court: Ask him what he made.

Col. Windom: He can't remember. I have been asking him for days. I am getting at it a little different way.

[fol. 943] The Court: It may be a little involved when you are asking the witness to make a mathematical calculation.

Col. Windom: I am only going to ask him to make three.

Q. Mr. Friedberg, in 1925 you filed a tax return and paid a tax of \$7.58 on it. In that year the tax rate up to \$4000, after all deductions of every type, was one and a half per cent. By a simple mathematical calculation, sir, that would have given you an income, a net income, of \$4405.14, would it not?

Mr. Sillman: Again, I object, because the deductions are not included.

The Court: Is this information in evidence?

Mr. Sillman: No, sir.

Col. Windom: I am merely quoting the law, which is a matter of judicial knowledge. He has a copy of it and I have a copy of it.

The Court: You are objecting on what ground?

Mr. Sillman: Your Honor, I am not objecting as to any of the rates that have been referred to, although he did inadvertently leave out a 25 per cent credit. What I am saying simply is, that the amount of tax paid does not lend itself to the kind of a mathematical computation backwards that he is talking about. You can make a million dollars, and if you have got a million dollars in deductions—deductions, not necessarily expenses, but deductions, and you know, Your Honor, how complicated these deductions might be—you might wind up with no tax with a million dollar income. Therefore, I don't claim under any circumstances [fol. 944] that the witness had any income like that, but I am merely trying to illustrate how unfair it is to work backwards and come to a conclusion.

The Court: Is not counsel merely working to the net income on which the tax was finally paid, not gross income?

Mr. Sillman: He may be talking about net taxable income, but it still presents a very unfair picture in that it does not indicate the income of the taxpayer. That's the point.

The Court: I understood counsel to be referring to net income alone.

Mr. Sillman: If he is referring to net income alone, then if you work back a figure then you would find out what net income is, but the unfairness is that it doesn't at all indicate what the taxpayer's income was that year. It tells what his technical—

The Court: I don't think the question is for that specific purpose, showing the gross income. The question is directed to the point of trying to find out the net income. For that purpose the Court is of the opinion that it is competent, as long as it is confined to the net income.

By Col. Windom:

Q. Mr. Friedberg, in the year 1926 you filed a return on which no tax was paid, a non-taxable return. The statute shows, sir, that the exemption in 1926 was \$3500, that the dependent exemption was \$400 and you did have one child in 1926, didn't you, sir?

A. Yes, I believe so.

[f. 115] Q. I think Elaine was born in '25.

A. That's right.

Q. That would give a total exemption of \$3900. Therefore, it is correct, sir, that your net taxable income for 1926 was less than \$3900, wasn't it?

Mr. Sillman: Our same objection will go to all of these questions.

The Court: Overruled. He may answer if he knows.

A. I don't recall.

Q. Wouldn't that be correct?

A. I don't recall it. Are you asking me what my gross income was at that time?

Q. I am asking you if it isn't the fact that your net income for the year 1926 was less than \$2900?

A. Net income?

Q. Yes, sir.

A. I don't recall that.

Q. In 1927, sir, the statute shows, again, that the married exemption was \$3500, that the exemption for dependents was \$800. In that year Wayne was born, was he not, therefore, you had two children?

A. That's right.

Q. And, giving you full credit for Wayne for the entire year would have given you \$4300 total exemptions. You filed a return in 1927 on which you paid no tax. Therefore, your tax or your net income was less than \$4300, wasn't it, sir?

[fol.346] A. I wouldn't recall that at that time.

Q. In 1928 you filed no return. The married exemption in that year was \$3500. Now, when you filed no return you take no dependency credit. That indicates, does it not, sir, that your net income for that year was less than \$3500?

Mr. Sillman: Now, if the Court please, I certainly do object to that super technicality.

Col. Windom: It is correct, isn't it?

Mr. Sillman: No, it isn't.

The Court: Overruled. You are not in disagreement as to the prevailing rate of tax and to the amount required to be earned before a return is filed, are you?

Mr. Sillman: Your Honor, that isn't the basis for my objection. It is just exactly the same as if the questioner

had asked him, the dependency is \$400, so therefore, your net income must have been less than \$400. One makes as much sense as the other. He had \$4300 exemption for the year plus his deductions, whatever they may have been.

The Court: Overruled. He may answer if he knows.

Q. In 1929, sir, the exemption, married exemption, was \$3500. You filed no return in that year. The law required that you file a return if you had a net income in excess of \$3500. Therefore, it is true, is it not, that your net income was less than \$3500 for the year 1929?

Mr. Sillman: Object.

The Court: Overruled.

[fol. 947] Mr. Sillman: \$800 is left off.

Q. Was it or wasn't it?

A. I don't recall.

Q. In the year 1930 the married exemption by law was \$3500. You did file a return on which no tax was paid. You had two children, you were entitled to a credit of \$400 a piece, which would be \$4300 exemption. Therefore, it is correct, is it not, that your net income for the year 1930 was less than \$4300?

A. I wouldn't recall that.

Q. In 1931 the exemption for a married couple was \$3500. You filed no return. The law required you to file a return if you had a net income in excess of \$3500. Therefore, upon the statement that you filed a return whenever one was due, your income was less than \$3500, was it not?

Mr. Sillman: Object, again.

The Court: Now, are you taking into consideration the children?

Col. Windom: He didn't file a return that year. The minimum deduction by law is \$3500 unless he files. When he files, it was \$4300.

Mr. Sillman: What's the difference if he didn't owe any tax.

Col. Windom: I am not the Congress of the United States.

Mr. Sillman: I appreciate that, but you can't arrive at the conclusion what his income was from these figures, either.

Q. In 1932 the exemption was \$2500. You filed no return. Therefore, if you filed a return in every year in which one [fol. 948] was due, your net income was less than \$2500, was it not?

Mr. Sillman: Object, if the Court please. The witness has stated that he filed a return whenever he thought any tax was due. Now, he is getting into some technical rules about who is required to file a return. If you make \$500 you are supposed to file a return in some years. It doesn't indicate what your income is, though, if you owe no tax. It is a switching back and forth that I am objecting to, Your Honor.

The Court: Overruled.

Q. In 1933 the statutory exemption was, again, \$2500. No return was filed. Therefore, sir, your net income was less than \$2500 that year.

Mr. Sillman: Again, I object. His exemptions are not taken into consideration, nor his deductions; \$800 exemptions.

Q. What is your answer, sir?

A. As I said before, whenever there was a taxable amount of income, I filed a report.

Q. It is correct, is it not, that your net income for that year was less than \$2500?

A. I don't recall.

Q. You would have filed an income tax return if it was over, wouldn't you?

A. It was what?

Q. You would have filed an income tax return if one was due, wouldn't you?

A. If one was due, yes.

[fol. 949] Q. In 1934 the exemption was \$2500. You filed no return. Therefore, your income was less than \$2500, wasn't it, Mr. Friedberg?

A. No, sir.

Mr. Sillman: Object.

Q. If it was more you would have filed an income tax?

A. I don't recall what it was at the time.

Q. If you had a sufficient income to require the filing of a return, you would have filed it, wouldn't you?

A. Yes, I would.

Q. In 1935 the exemption was, again, \$2500, and no return was filed. Therefore, sir, if one had been required you would have filed it.

A. If one would have been required I would have filed it.

Q. Therefore, your income was less than \$2500, is that true?

A. That I don't recall.

Mr. Sillman: Same objection all the way through.

The Court: You may have your objection.

Q. And, giving you credit, now, in all these years, which I have just discussed with you, for the maximum, either the tax computed as I have stated to you, in those years where you had a non-taxable return giving you credit for the maximum right up to the exemptions, in those years where you didn't file a return giving you credit to the basic exemptions, your total income, permit me to say, from 1923 through 1935, could not have exceeded \$44,649.09, could it?

Mr. Sillman: Object to that because the premise is all wrong.

The Court: He may answer if he knows. He has testified [fol. 950] fully as to his income. This is cross examination. He may answer if he knows.

Q. Isn't that correct?

A. No, sir.

Q. Well, now, what is the matter with it, Mr. Friedberg?

Mr. Sillman: Now, if the Court please, I object to that.

The Court: He may answer if he knows what is the matter with it.

Mr. Sillman: How would he know the technicalities of this law.

Col. Windom: If he says I am wrong, I want to know where I am wrong.

Mr. Sillman: You know why you are wrong.

The Court: He may answer if he knows. Objection overruled.

A. I know that it was greatly in excess of that.

Q. Why didn't you file income tax returns?

A. Whenever there was one that was necessary to file, I filed it.

Q. Then, if you didn't file any, your income must have been less than the statutory amount, isn't that correct?

A. I don't recall that, what you are referring to. I don't know anything about the statute.

Q. Isn't that correct, Mr. Friedberg?

A. (No response.)

Q. Mr. Friedberg, in 1936, the next year, the exemption for a married person was, again, \$2500. You filed no return [fol. 951] that year. Therefore, your net income must have been less than \$2500, is that correct?

A. I wouldn't recall that.

Q. In 1937, sir, the married exemption was \$2500. You filed a return on which no tax was paid. You had two children, did you not, at that time in 1937?

A. What was that?

Q. '37, sir.

A. Yes.

Q. Two children?

A. Yes.

Q. Which gave you a dependency credit of \$800; \$2500 and \$800, \$3300. You paid no tax. Therefore, it is true, is it not, that your net income was less than \$3300?

Mr. Sillman: Same objection.

The Court: Overruled.

A. I don't recall it

Q. In 1938 the exemption, again, for a married person was \$2,500. You filed no return. In 1938 it becomes a combination return. You had two children and you were entitled to the total dependency for the first time that year. Therefore, filing no return your income was less than \$300, wasn't it?

Mr. Sillman: Object.

The Court: Just a moment. The question is rather complicated. Read the question.

(Question was read.)

Mr. Sillman: I couldn't puzzle that out.
[fol. 952] The Court: The Court doesn't follow your question.

Col. Windom: I withdraw the question.

Q. I state to you that for the year 1938, from there on we must take into consideration the married exemption and the dependency exemption.

Mr. Friedberg, in 1938, for a married man with two children, the total exemption allowed by law was \$3300. You filed no return that year. Therefore, your net income was less than \$3300, was it not?

A. I don't recall.

Mr. Sillman: Object.

Q. In 1939 the exemption for a married person with two children was, again, \$3300. You filed no return. Therefore, you made a net income of less than \$3300, isn't that true?

Mr. Sillman: Same objection.

A. I wouldn't recall that.

Q. In 1940 the total exemption for a married person with two children was \$2800, \$2000 for yourself and wife and \$800 total for the children. You filed no return. Therefore, your income, your net income was less than \$2800, wasn't it?

Mr. Sillman: Same objection.

A. I wouldn't recall.

Q. In 1941, sir, the married exemption was \$1500, for the two children a total of \$800, making \$2300 total exemption. You didn't file a return. Therefore, your net income was less than \$2300 for the year 1949, wasn't it?

Mr. Sillman: Same objection.

[fol. 953] The Court: Overruled.

A. I don't recall.

Q. Adding all of the totals there, five years in which you did not file returns and one non-taxable return, that would indicate that the maximum possible net income you could have had for those six years was \$18,300, wasn't it sir?

A. I wouldn't know.

Q. Mr. Friedberg, you have stated, have you not, that when you came to Columbus in 1923 you had \$25,000?

A. Approximately that.

Q. In the computation that we have just gone through, my computation of your maximum possible income for the years 1923 to 1935, inclusive, is \$44,649.09. My computation, which I have just read to you in detail for the years 1936 to 1941 inclusive, maximum possible net income, is \$18,300. Now, adding your \$25,000, which you said you had in cash, to the \$44,649.09, and the \$18,300, and you also had inherited, did you not, \$1030 from your mother's estate, adding that in, because that would have been income, at least it would have been an asset to you, would give a total, would it not, of \$88,979.09. That would be your total available earnings from the time you came to Columbus through 1941, would it not?

Mr. Sillman: I object, if the Court please, because the questioner is taking his computation of income and not what the witness stated was his income.

The Court: Let the witness answer whether or not it is true, if he knows. If he understands the question, he may answer.

[fol. 954] A. That's not true.

Q. What is the matter with it?

A. You are just taking your figures for granted.

Q. Now, based upon my figures, and as shown in our net worth statement, you had assets in 1942 for which you were given credit in the net worth statement; that is, tangible assets of \$11,768.88. Subtracting that from the other gives you a total possible income, without any deductions for living expenses, of \$77,210.21.

Mr. Sillman: Again, I object. These are his figures, not the witness'.

The Court: Let him finish the question.

Q. How could you possibly have saved \$100,000?

A. Not according to your figures.

Q. I haven't even deducted one cent for living expenses.

A. All those figures are all erroneous.

Q. What is wrong with them? Can you point out any one year when they are wrong, sir?

A. I just can't do that any particular year; no, I cannot. But I say that they are not correct.

Q. But, in all of those years when you didn't file an income tax return, it is your position that no tax was due, isn't it?

A. Yes. If I did not file, it wasn't due.

Q. And in those years when you filed a return and paid no tax, it is your position that no tax was due?

A. As I said, again, if there was any taxable amount [fol. 955] due, I filed a return.

(A brief recess was taken.)

Q. Mr. Friedberg, did you keep any retained copies of the bank deposit slips when you made a deposit?

A. Did we keep them?

Q. Yes.

A. I suppose we did.

Q. Well, if you did, sir, why weren't they displayed to Mr. Clager?

A. Bank deposit slips?

Q. Yes, sir. What I am referring to is this type of slip. Did you keep copies of them when you made your deposits?

A. I don't recall. Whatever we had at the time. Aren't these deposit slips?

Q. These are from the bank, the bank records.

A. I don't know. We gave them whatever we had available.

Q. And, if you did not give Mr. Clager any bank deposit slips, then you did not keep them, is that right?

A. I wouldn't know that.

Q. I would like for you to be positive, as to whether you did or didn't.

A. We gave him whatever records we had.

Q. And if you did not give him any bank deposit slips you had none, is that correct?

A. I presume so, if they weren't there. It was my impression—I don't recall that.

[fol. 956] Col. Windom: May I inquire, is there any question that the answer is that they did not keep those?

Mr. Sillman: I don't know.

Col. Windom: Do you have them?

Mr. Sillman: We don't have them.

Q. If they are not now in existence, Mr. Friedberg, is it the fact that you didn't keep them?

A. I wouldn't know that.

Mr. Sillman: Object, if the Court please.

A. I don't know that. I never made it up and I don't recall that.

The Court: Overruled. He may answer.

Q. Well, did you give Mr. Clager every record which you had?

Mr. Sillman: Object to that because he didn't give Mr. Clager anything. He gave Mr. Curtis all of his records. He has testified to that.

Col. Windom: Before Your Honor rules on that——

Q. Isn't it a fact that you have taken records back and forth to Mr. Clager?

A. Not that I know of.

Q. You have been in Mr. Clager's office?

A. Yes, but I didn't bring any records up there.

Q. You got some records from him, borrowed them back, and then returned them?

A. No, I never got any records.

Q. Well, did you or didn't you keep bank deposit slips? fol. 957] A. I don't recall that. I don't know that.

Q. Now, Mr. Friedberg, you heard Mrs. Friedberg testify that she had never filed a personal property tax return, did you not?

A. No.

Q. You didn't hear that?

A. That she didn't file?

Q. That she had never.

A. No, no.

Q. Well, I state to you that she did testify to that.

A. Yes, but I mean I don't think she filed a return. I took care of that.

Q. Mr. Friedberg, you did in fact file personal property returns in 1935, 1936 and 1937, did you not?

A. I presume so, if they are.

Q. And on the 1935 personal property tax return you paid \$1.85; in 1936 you paid \$2.95; 1937 you paid \$4.11, is that correct?

A. If it is on there, it must be.

Q. I am reading from the Treasurer's duplicate, sir.

A. I see.

Q. What year was the house on Nelson Road foreclosed, sir?

A. I don't recall that.

Q. It was 1937, wasn't it?

A. Probably so.

Q. Mr. Friedberg, if you had all the money in cash you say you had at the time your house was foreclosed in '37 [fol. 958] and subsequent thereto, why didn't you file a personal property return?

A. Well, didn't I file a personal property return?

Q. Isn't it a fact that you filed no returns between 1937 and 1947?

A. I wouldn't remember that.

Q. And, isn't it a fact that when you filed in 1947 you went back on that return and included the years 1942, '43, '44, '45, '46 and '47?

A. I don't recall that.

Q. Now, what I am getting at is, why wasn't any personal property tax return filed between '37 and '42?

A. I don't recall that. I don't know that.

Col. Windom: Mark this Government's Exhibit 30.

(The document referred to was marked Govt's Exhibit 30 for purposes of identification.)

Q. Mr. Friedberg, I hand you what has been marked Govt's Exhibit 30, which consists of several extracts and these large forms, and I ask you whether that is your signature that appears thereon?

A. Yes, sir, that is my signature.

Q. Will you turn it over and examine the whole return, sir. Is that your personal property tax return that you filed in 1947?

A. Yes, that's the personal property tax return.

Q. Mr. Friedberg, I notice, for example, in this return,

that you list tailoring supplies \$4065, furniture and fixtures at \$280, but I notice that schedule 10, which is entitled "Money and other taxable intangibles—undeposited cash on hand in safety deposit box or elsewhere" there is [fol. 959] nothing entered. If you had all this money why didn't you report it?

Mr. Sillman: What's the year of that?

Col. Windom: 1947. There are two returns actually filed simultaneously, '46 and '47.

A. I don't think that had any relation to what Mrs. Friedberg had; her estate.

Q. Mrs. Friedberg didn't file any personal property tax return. Didn't you feel that that money belong— to one of the two of you? You have referred to it several times as "my money", have you not? You have explained to me that you thought it was as much yours as hers.

A. Yes.

Q. Why didn't you put it in?

A. I thought that had reference only to the business.

Q. You carried it as David Friedberg. You signed it, sir, as David Friedberg, not as David Friedl. rg doing business.

A. Probably omitted that, but that's what I had reference to.

Q. Are you contending that you misunderstood the purport of this form?

A. I didn't think that had any relation to other than what the business was.

Q. You had a business during these other years from 1937 to 1942, didn't you?

A. Yes.

Q. If this is the business form why didn't you file in those years?

A. I don't remember whether I did or not. I may have filed.

[fol. 960] Mr. Sillman: What year are you talking about?

Col. Windom: I am talking about any year from '37 to '42.

Mr. Sillman: We would object to that. You are again mixing up the facts a little bit. The Corporation in which

Mr. Friedberg was interested in in those early years—
The Court: Overruled.

Q. If it was a corporation why did you file in '36 and '47, Mr. Friedberg?

A. I don't recall that.

Q. The auditor's duplicate shows David Friedberg.

Mr. Sillman: Which one?

Col. Windom: 131 North Nelson Road.

Q. Was that your address?

A. Yes, that's right.

Q. Now, sir, the last personal property tax return you filed prior to '47 was 1937, the year in which your home was foreclosed. Why did you file a return in '37 and not one in '38, sir?

A. I couldn't tell you.

Q. Wasn't it because you were completely broke, Mr. Friedberg, that you had no assets?

A. That's an untruth.

Q. Then, why didn't you file a return?

A. I am telling you I don't remember that. I don't recall it.

Q. But, if you had anything you would have filed a return, wouldn't you?

[fol. 961] A. Perhaps I did. I don't know whether I did or not. I don't recall.

Q. If the records show you didn't, sir—why didn't you file one in 1942?

A. I don't recall that.

Q. Why did you wait until 1947, until this investigation started, to file these, sir?

A. Well, I don't know.

Col. Windom: That's all.

Redirect examination

By Mr. Sillman:

Q. Now, Mr. Friedberg, we are very much concerned with whether you did or did not have cash in the year of 1947 when you filed this personal property tax return, and

which Mr. Windom has just pointed out picked up earlier years. Did you or didn't you have cash in the year of 1947 in your safety deposit box?

A. Yes, sir.

Q. You heard Mr. Nerny testify that he counted it, didn't you?

A. That's right.

Q. You heard Mr. Curtis testify that he counted it, didn't you?

A. That's right.

Q. So, you did in fact have it?

A. Yes, certainly, we had it.

Mr. Sillman: That's all.

[fol. 962] Recross examination

By Col. Windom:

Q. Why didn't you include it in your return?

Mr. Sillman: He has answered that. I object to a repetition.

The Court: He may answer.

A. Well, for the same reason, that I didn't think it had any reference to the business at all.

Q. Didn't it have just as much reference as those returns of '35, '36 and '37?

A. As I said, there was no reference to the business in connection with that return.

Q. That is correct, there is no reference to it there.

A. Yes.

Q. Then why didn't you return the personal cash?

A. I don't know whether I did or not. I don't recall that.

Col. Windom: That's all.

Mr. Sillman: That's all.

The Court: You are excused.

The Court intends to recess for lunch at this time. You must follow the instructions heretofore given you. The Court will reconvene at one-thirty.

(A recess was taken until one-thirty, January 7, 1952.)

January 7, 1952

ARTHUR D. HALL, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Platt:

Q. State your name, please?

A. Arthur D. Hall.

Q. Where do you live?

A. 2786 Sunbury Road.

Q. That's out beyond Central College, isn't it?

A. Just beyond.

Q. What is your occupation?

A. Insurance.

Q. Where do you have your office?

A. 5 West Broad.

Q. How long have you been in that business in Columbus?

A. 32 years.

Q. Are you acquainted with the defendant in this case, Mr. Friedberg?

A. I am.

Q. How long have you known him?

A. Approximately 25 years.

[fol. 964] Q. Have you had business dealings from time to time with him?

A. Yes, sir.

Q. Have you known Mr. Friedberg outside of your business dealings at all?

A. No, just in business.

Q. Do you recall having had a conversation at any time with Mr. Friedberg about the purchase of an annuity?

A. I do.

Q. And, where did you have that conversation?

A. At his place down on South Third Street.

Q. When was that conversation?

A. About a year after he went down there, and I would place that about the latter part of '42 or the early part of '43, but I think '42.

Q. Do you have any other way of placing it besides in relation to the time he moved to Third Street?

A. I sold him a non-cancellable disability policy and I happen to know by records that that was in '44, the very early part of '44, and it was about a year before that.

Q. Will you tell us, now, Mr. Hall, the substance of the conversation which you had with Mr. Friedberg about this annuity?

A. Well, he asked me about an annuity, and I asked him how much he wanted to put into one, and he told me \$50,000, and I definitely advised against it as a very poor investment at his age.

Q. Did Mr. Friedberg indicate to you in any way that this \$50,000 he was proposing to invest was all the money he had?

[fol. 965] A. It wasn't discussed.

Mr. Platt: That's all, Mr. Hall.

Cross examination.

By Col. Windom:

Q. Mr. Hall, what Mr. Friedberg said here in the court room that he wanted to purchase was a single premium policy of insurance which at a given age would give him an income, and any remainder on the policy after his death—

A. There wouldn't be on an annuity—there wouldn't be any remainder on an annuity.

Q. —and the remainder after his death to his heirs. That isn't an annuity policy, is it?

A. Yes, you could write a guaranteed annuity which would guarantee to pay him so much, say twenty years, and if he died in ten years, why, the balance of that would be paid.

Q. What is the correct nomenclature for the policy I have described?

A. Well, annuity.

Q. It is an income policy, isn't it?

A. It is an annuity.

Q. Isn't it correctly known in your profession as an annuity?

A. No, sir, it is known as annuity.

Q. And, isn't it standard practice in your profession, on an income policy, that any remainder on the guaranteed minimal of the policy is paid to the estate of the beneficiaries?

[fol. 966] A. Paid to the estate or contingent annuitant.

Q. Or to the beneficiary, whoever is designated?

A. Now, it would have to be designated. There is a distinct difference between an annuity and a guaranteed annuity.

Q. It was entirely possible to accomplish that which he was discussing, then?

A. His request to me, I remember very distinctly, was a straight annuity.

Q. Therefore, what he discussed with you and what he has described here in the court room are two different things?

A. I don't know what he has described.

Q. I told you.

A. I might be wrong, you understand, in my recollection. I had no thought at the time that I would be called upon to say exactly what he told, but my definitely recollection was a straight annuity.

Q. Wouldn't it have been possible for you to have sold him that which he has told us here in the court room he wanted?

A. Yes, sir.

Q. Just exactly why would that be a bad investment?

A. Well, at his age it would be a very poor investment.

Q. Why?

A. The return is too low at a young age. He was in the early 40's, as I recall, and an annuity has to be up close to sixty to have any kind of a return at all.

Q. When did he want this to start?

[fol. 967] A. Immediately.

Q. And, how much did he want to get out of it each month?

A. I don't recall.

Q. How much was the interest in the company in which you could have written?

A. They don't have interest. It is an annuity rate.

Q. What was the annuity rate at that time?

A. I can't tell you, but annuities at young ages are very, very small return. I imagine, if you will permit a pure guess, it would have been about two and three quarters per cent at the top.

Q. And, at that time was there any better investment than that, sir?

A. Well, of course, I thought so and told him so.

Q. What did you think was better?

A. Well, I suggested a building for his business.

Q. Mr. Hall, you have been in the insurance business for 32 years?

A. Yes, sir.

Q. Do you mean with \$50,000 cash and a policy laying right there, you advised the gentleman not to take it?

A. I pride myself on being a professional insurance man, not just a peddler.

Col. Windom: That's all.

The Court: You are excused. Call your next witness.

Mr. Sillman: Mr. Henry Weiss.

The Court: Let the record show this witness has been sworn.

[fol. 968] HENRY W. WEISS, having been previously sworn, was recalled to the stand and testified further as follows:

Direct examination.

By Mr. Sillman:

Q. For the purpose of the record, you are Henry W. Weiss?

A. That's right.

[fol. 969] Q. So that the four years that are involved, the income tax returns for '44, '45, '46 and '47, you prepared each of those returns?

A. That's right.

Q. Is that correct?

A. That's right.

Q. And, on what basis were those returns prepared by you?

A. Based on the information furnished by Mr. Friedberg.

[fol. 970] Q. We have been referring to figures, some in his handwriting and some typed, on his income tax work sheets. Is that what you refer to now?

A. That's what I refer to.

Q. Generally speaking, what did those figures consist of, what category for the years involved?

A. They show the income and the various expenses.

Q. Now, on the 1947 return there was a loans repaid item which I would like to hand you. I am handing you Exhibit 3 (d). Will you turn to the work sheet that was prepared by Mr. Friedberg for that income tax return, and will you tell me what year that return is for?

A. 1947.

Q. Now, looking to the left corner, at the top of the page of that work sheet, is there an item there "Loans Repaid", or some language similar to that?

A. Yes.

Q. And, what is written there?

A. It says, "Less Loans Rep. \$5,380.93."

Q. That's five thousand three hundred—

A. —and eighty dollars and ninety-three cents.

Q. We have been referring to the loans repaid item in round figure terms of \$5300. Is that one and the same item?

A. I would think so.

Q. Will you explain that, please, Mr. Weiss, how you handled that?

A. Well, as I understood, his custom was to bring money into the business.

[fol. 971] Col. Windom: I object to that answer.

The Court: Yes, unless you know.

Q. I will get at it this way. On what date did you prepare the 1947 return?

A. On the 15th of January 1948.

Q. And, on what date was the return due?

A. Same day.

Q. On what date did Mr. Friedberg furnish you with the income tax work sheets?

A. I think they were sent over to my office on Monday.

Q. How many days before the last day?

A. That was, I think, the 12th.

Q. And, the return was due on the 15th?

A. That's right.

Q. Of January 1948. Now, we are speaking of the 1947 return?

A. That's right.

Q. Income tax returns for a calendar year are always due the following year?

A. That's right.

Q. The '47 return is due in 1948 actually, is that correct, Mr. Weiss?

A. That's right.

Q. Now, I think that when you were on the stand before, you testified that because of the time element involved in preparing this you ran this through the mill. Would you explain what you meant by that expression?

[fol. 972] A. Well, we presume that the taxpayer's figures are correct, for the purpose of making out a tax return, unless we make an audit.

Q. And, by an audit you mean a detailed audit?

A. Well, at least a balance sheet audit.

Q. And, when you say this was run through the mill, you mean that the return was gotten up——

A. It means you have to get them together rapidly and get it out from under. You can't spend too much time on small returns.

Q. What is the fact, did you or did you not have pressure on you by reason of time?

Côl. Windom: I object.

The Court: Yes. The question is suggestive. Let him tell what he did.

Q. Did you have a lot of time to prepare that return, Mr. Weiss?

A. No, not at a time like that.

Q. Did you have any other duties?

A. Yes.

Q. Did you at the time that return was prepared question Mr. Friedberg about the loans repaid item, the \$5300 item?

A. No, we presumed that they had been brought in the same year and therefore were proper deductions.

Q. You say you presumed that?

A. I presumed that, sure.

Q. Now, would you explain to the jury the tax-wise effect of the repayment of a loan which was brought in in the same year, as you put it, and the payment [fol. 973] of a loan which was brought in in a prior year. How does that affect the tax?

Would you explain that in lay language to all of us?

A. If he brought it in the same year and included it in his gross income, which he did, then it would be proper to deduct it because it is not a taxable item.

Q. It would be proper, you say?

A. Certainly.

Q. Now, when does it become improper to deduct the loans repaid?

A. When they are brought in in a prior year and are deducted in a subsequent year, it is not a proper deduction.

Q. Now, when you say not a proper deduction, do you mean not a proper deduction for any year, or not a proper deduction for the year in which the deduction is taken?

A. I mean the year in which it is not brought into the gross income.

Q. Now, let's see if I summarize that correctly. This is the taxwise effect, Mr. Weiss. If money is loaned to a business in one year and it is repaid in a following year or some subsequent year and the deduction is taken in a subsequent year, that is an improper deduction, tax-wise?

A. Yes. As a matter of fact, it shouldn't be brought into gross income at any time, but since they do that, it should be taken out in the same year it is brought in.

Q. And, in this particular instance, if the \$5380.93 had been brought in in the year of 1947, would it or would it not have been a proper deduction on the 1947 return?

[fol. 974] A. It would have been a proper deduction in that case.

Q. Now, there has been testimony that it was brought in

in some earlier year. Therefore, was it or was it not a proper deduction in the 1947 return?

A. It was not a proper deduction in 1947.

Q. Now, does that mean that it was never a proper deduction in any return?

A. No.

Q. When would it have been a proper deduction?

A. In the same year in which it was brought in and included in the gross income.

Q. When did you first discover that the \$5300 loans repaid item was an improper deduction for the year of 1947?

A. A little later when we made an audit.

Q. And, when did you commence your audit?

A. I don't know exactly. A month or so following—well, in the early part of 1948, early part of the summer of 1948.

Q. In the summer of 1948, is that right?

A. Yes, in the summer of 1948, in the early part.

Q. In other words, you commenced your audit after this return had been filed?

A. Oh, yes.

Q. And the information that you discovered from your audit you did not have at the time the return was prepared in January?

A. No, I didn't have it.

[fol. 975] Q. Do you have any supporting information to bear out your recollection of the date on which the return was prepared? Do you keep a diary, for example?

A. Yes, but I don't have that with me.

Q. Have you examined that recently?

A. No. I did several months ago.

Q. Did you check for a date to determine on what date the return was prepared?

A. No, I didn't look for exact date. I was looking for the general time when I began.

Q. You stated that you never questioned Mr. Friedberg about the time when this loans repaid item, or the loans, rather, were brought in at the time you prepared the return. Did you question him about it when you were in the process of making an audit?

A. Well, when we were in the process of making an audit we were looking for the income side of it, and didn't find it, and that raised the question.

Q. And, would you describe to the jury what you did in connection with the audit that you made? What do you mean by an audit?

A. Well, we checked the records of receipts and disbursements, checked the invoices and checks and such other incidentals, payrolls and such like.

Q. And, when you say the records, do you mean Mrs. Friedberg's records?

A. Mr. Friedberg's records; the records of the Buckeye [fol. 976] Tailoring Company.

Q. State whether or not those records were sufficiently complete for you to make an audit?

A. Well, they were kept in some abbreviated form, some of it, but still made a fairly good story.

Q. Now, it was in connection with this audit that you did discover the error that we have been speaking about, the \$5300 item?

A. Yes.

Q. Mr. Weiss, I want to ask you, frankly, whether you now feel, in view of the complete audit that you made and your present knowledge, whether you now feel that you were justified in assuming that the \$5300 loans repaid item had been brought in in the year of '47?

Col. Windom: I object.

The Court: Yes. I think the witness has already answered that he assumed the figures presented to him, the information, was correct. I think he has already answered.

Mr. Sillman: If the Court please, this is an entirely different matter. He did testify that he assumed the figures were correct and that he assumed that the figure meant money brought in in the year of '47. He has testified that his audit of the records indicated that the money was not brought in in the year of '47. I am now asking this question, as an expert witness, a Certified Public Accountant who handles these matters, I am asking him whether he now feels justified in making the assumption

which he made in the hurried period in which he prepared the return without the benefit of his audit.
 [fol. 977] The Court: He does not say he made any assumption. He says he took the figures as presented by the taxpayer. However, the Court will permit him to answer. If the Court understood the witness correctly, he stated his usual custom was to take the figures and facts and the information furnished by the taxpayer, and he assumed they were correct and he used them.

He may answer. Go ahead.

Mr. Sillman: I would like to clear up the other question first and then ask him this question.

The Court: You may do so.

Q. At the time you prepared the return, state whether you did or did not assume that the item of \$5380.93 represented money brought in in the year of 1947?

A. I did.

Q. Did you make that assumption?

A. I made that assumption.

Q. Now, my question, which I will just rephrase, is whether you now feel justified in having made that assumption?

Col. Windom: I object, because the assumption was wrong, by the witness' own admission.

The Court: He may answer. Overruled.

A. Well, in the light of subsequent examination the assumption was an error.

Q. Why do you feel that way about it now, Mr. Weiss?

A. Because in making the examination, I discovered it [fol. 978] did not come in the year in which I had assumed that it had come in; that is, in '47. It was money brought in prior.

Q. State whether you feel now, Mr. Weiss, that you should or should not have questioned Mr. Friedberg about item at the time you prepared the return?

Col. Windom: I object.

The Court: Yes. What is the difference? There wasn't any duty devolved upon him to question Mr. Friedberg, was there?

Mr. Sillman: Definitely, sir. My point simply is this, if I make it clear. This is an item which is an error, which we admit to be an error, and we expect to show that Mr. Weiss feels he should have questioned Mr. Friedberg.

The Court: Are you trying to place the responsibility on Mr. Weiss for the error because he didn't question Mr. Friedberg?

Mr. Sillman: If he is willing to assume that responsibility, as an expert who prepared the return. It is an error which is a quite natural one, and we feel we have a right to ask whether the accountant felt he should have questioned him.

The Court: The Court will permit him to answer but doubts the materiality.

The Witness: If I had to do it over again, I would question him on it. I should have questioned him in the first place.

Q. And when you say you should have questioned him in the first place, I want you to state on what you base that statement?

A. Inasmuch as it was plainly put there and flagged, as [fol. 979] you say, I should have gone into the matter.

Q. In other words, the amount was not something you discovered by your audit?

A. No.

Q. The amount was written on the work sheet at the time the return was prepared?

A. It was there.

Q. Now, getting down to your 1947 audit, Mr. Weiss, let me ask you whether the income as shown on Mr. Friedberg's work sheet corresponds or does not correspond with the gross receipts in his cash journal. Can you give us any information about the results of your audit there?

A. I didn't quite get your question.

Q. Now, making allowance for the error that you have just described, this loans repaid deducted in the wrong year, making allowance for that, you have explained that, and bearing in mind that you are making that allowance, I am asking whether the income shown on Mr. Friedberg's work sheet corresponds approximately with the gross receipts shown in his cash receipts journal?

A. Yes, it comes very close to it.

Q. In other words, what I am asking is, is the amount of gross income which Mr. Friedberg furnished you with, is that approximately the amount which was listed in his cash receipts journal?

A. That's right.

Q. Did you make any comparison between the sales which were listed in detail and the cash receipts journal?

[fol. 980] A. Yes.

Q. And, did you make a comparison between those figures and the gross figures shown on the work sheet?

A. Yes.

Q. How did they compare?

A. They were all right.

Q. In other words, the sales listed in detail in the cash receipts journal and the work sheet figures, do they all compare favorably; the gross amount?

A. They approximate very closely.

Q. Did you also total the items that are designated D. Friedberg Loan?

A. They are included.

Q. Included as what?

A. As gross income.

Q. Now, that's very important to me. I want to be clear on that. I am speaking about the cash journal for 1947. There appear at various places items that are designated D. Friedberg Loan or Friedberg Loan, and so forth. Now, I am asking you whether or not those were or were not included in gross income.

A. They were included and they make up that gross income amount that he shows.

Q. What do you consider that designation that Mrs. Friedberg used? Is that a correct designation for income?

Col. Windom: I object.

[fol. 981] The Court: Yes.

Q. Well, the fact is, anyhow, Mr. Weiss, that regardless of what name they called it, it did go into the income tax?

A. Yes, it went in.

Q. Is that correct?

A. That's right.

Q. In the course of your investigation, Mr. Weiss, did you find any evidence of any attempt to conceal income?

A. No.

Q. Have you had any experience auditing books in which there were attempts to conceal income or that which you construed to be such?

A. Yes, we run across that occasionally.

Q. And, are you familiar with the kinds of entries and dodges and so forth that are used?

A. Yes, I am familiar.

Q. Did you find any such evidence in your examination of Mr. Friedberg's books and records for the year of 1947?

A. No.

Q. Did you find any evidence of any attempt on the part of either Mr. or Mrs. Friedberg to manipulate their books or records?

A. No, no such attempt.

Q. Mrs. Friedberg has testified, sir, that she went to the safe deposit box with you; that is, their safety deposit box that was in the name of Handler in the Market Exchange. Do you have any recollection of that?

A. Yes.

[fol. 982] Q. What is the fact? Did you or didn't you go there?

A. Yes, we went there on October 14, I think, 1947.

Q. Now, were you advised by either Mr. or Mrs. Friedberg of the date on which the agents, Nerny and Curtis, went to their safety deposit box?

A. Yes.

Q. And, to refresh your recollection, was that on October 10, 1947?

A. Yes.

Q. Now, with reference to the date the agents went to the box, when did you and Mrs. Friedberg go? How many days later?

A. Well, it would be on the 14th. It would be four days later.

Q. Was it the 14th or the 13th?

A. The 14th; Tuesday, the 14th.

Q. And, what did you do when you went to the box?

A. Well, we examined all the contents of the box.

Q. What did you find in there?

A. Counted the cash.

Q. What kind of contents were in the box?

A. Cash and bonds.

Q. And, you say you counted the cash?

A. Counted the cash.

Q. Do you remember the amount?

A. About \$19,600 and some odd dollars.

Q. How was that cash kept?

A. In envelopes.

Q. And, in more than one?

[fol. 983] A. Yes.

Q. Did you say envelopes?

A. Envelopes, yes.

Q. Do you recall whether there were or were not any dates on those envelopes?

A. No.

Q. Were there or weren't there?

A. There were no dates, as far as I remember.

Q. Now, if there had been dates on the envelopes, do you think you would have remembered?

A. I would have been very much interested in dates.

Q. Now, Mr. Weiss, back in 1938, in fact, on up to '41, you were the accountant for the old Buckeye Tailoring Corporation?

A. That's right.

Q. I will ask you whether you recall any conversation with Mr. Friedberg in connection with the subject matter of additional money being put into the business?

A. Yes, we had a discussion on that.

Q. Would you tell us where that took place?

A. In the old Buckeye Tailoring office on East Long Street.

Q. And, who was present?

A. Mr. Friedberg.

Q. And yourself?

A. And myself, yes.

Q. What was the conversation you had?

[fol. 984] Col. Windom: When was it?

Q. What date was it, sir?

A. Must have been in the spring of '38.

Q. Are you sure of the year, if not the month?

A. Well, I think that's about right.

Q. You think it was the spring of '38?

A. It was the time I was making the audit.

Q. Tell us, what was that conversation?

A. Well, Mr. Friedberg asked me to stay over a little later toward evening, until after Mr. Cohen and Mr. Weiss were gone, to discuss the matter of enlarging the business, taking on a tailor to trade way of doing business instead of what they were doing, and made the statement that it would take, of course, quite a little more money.

Q. Who made the statement?

A. He made the statement it would take quite a bit more money to do it. We sat down and figured roughly what it would take in the way of money to buy and keep the increased inventories, and accounts receivable and equipment and such like that.

Q. What did you figure it would cost, in this conversation with him? What figure did you come up with?

A. The minimum was \$45,000; \$15,000 a piece, you see.

Q. And, what was the maximum?

A. The maximum was \$60,000.

Q. Now, did you have any discussion with Mr. Friedberg about who would put that money up, or who was thinking of putting it up?

[fol. 985] A. Well, he had talked to his partners, or the other stockholders, and they seemed to be reluctant, or at least Mr. Cohen was, but he still was interested in going ahead with it.

Q. Did you at any time ask him whether he could put that money up himself?

A. Yes. He talked about going ahead with it himself, and I asked him the question as to whether he would be able to put up the forty-five or fifty thousand, or whatever it would take, and he said yes.

Q. What was the maximum amount?

A. Well, we mentioned \$50,000 in particular, then.

Q. But, you had before mentioned figures between forty-five and sixty?

A. We knew the top figure—we figured that the top figure would be about \$60,000 and the bottom would be \$45,000.

Q. You say you asked him whether he was able to put that money up?

A. Yes.

Q. Not with his partners, but himself?

A. No, himself.

Q. What was the answer?

A. He said, yes.

Q. Did you get any impression that the fifty or sixty thousand was all Mr. Friedberg had at the time?

A. No, I got the other impression. He readily indicated that he could put that money up, so I naturally didn't think a man would put every dollar in a thing of that sort.

[fol. 986] Q. Did you give Mr. Friedberg any advice on whether that business venture was good or bad?

A. I was rather skeptical of it.

Q. Did you encourage it as an accountant?

A. No, I discouraged very much going in himself and keeping the other two men in the picture.

Q. Did you say anything specifically to him?

A. I told him not to do it.

Q. And, did you give him any reasons why you thought he shouldn't put that money up?

A. Well, those reasons involved the other two men.

Q. Personal relationship?

A. Yes.

Mr. Sillman: You may cross examine.

Cross examination.

By Col. Windom:

Q. When did you first start working for the corporation?

A. 1924.

Q. You had prepared all of the returns they had filed during those years?

A. During those years, yes.

Q. Did you do any work for the individual stockholders in the corporation: Mr. Friedberg, Mr. Cohen and Mr. Weiss?

A. I did for Mr. Weiss.

[fol. 987] Q. Did you do any work for any of the others?

A. I may have made some of Friedberg's returns.

Q. Did you or didn't you?

A. Were you asking a question?

Q. Did you or didn't you make such returns?

A. I am not so sure.

Q. When would you have made them if you did?

A. Made them at the end of the year.

Q. I mean what years?

A. Well, it wouldn't be for anything earlier than '24.

Q. Did you make up delinquent personal property—personal property tax returns for the partners, or I should say stockholders?

A. I don't recall.

Q. You have made up personal tax returns for Mr. Friedberg, haven't you?

A. Yes.

Q. I ask you whether or not you would have made up returns for Mr. Friedberg in the period 1935 to 1937?

A. I couldn't say. I know that Mr. Friedberg made some of his own income tax returns. I am not so sure but what I helped him in making out one or two, but my records back there I destroyed. I am not in a position to give you definite answer.

Mr. Sillman: Are we talking about income tax returns or personal property?

Col. Windom: He just answered about income tax.

[fol. 988] Q. What is your recollection about the personal property tax return?

A. I have no recollection on the personal at all.

Q. Mr. Weiss, when you discovered that that deduction of some place around \$5300 was improper—you say you discovered it in the summer of 1948—did you file an amended return?

A. No.

Q. Why not?

A. He was under investigation, then.

Q. Why didn't you file an amended return?

A. Not when you are under investigation.

Q. You don't file an amended return when you are under investigation?

A. No.

Q. Mr. Weiss, are you familiar with the recent decision of the Sixth Circuit involving the doctor?

A. I don't know.

Q. You have discussed that case with Mr. Platt, haven't you, sir?

A. Could be.

Q. And in that case you know that the filing of amended returns had a considerable influence on the decision, didn't they, sir?

Mr. Sillman: I object to that line of questioning.

The Court: Sustained. We are not trying any doctor's case.

Col. Windom: I am trying to find out what he knows.

Q. Now, you said you found the books of Mr. Friedberg sufficiently complete to make an audit, is that correct?
[fol. 989] A. That's right.

Q. Did you know at that time, sir, that Mr. Friedberg had not entered any reorders on his books?

A. What do you mean by reorders?

Q. Repeat orders from standing customers. Did you know they weren't entered on those books?

A. No, I didn't know that.

Q. Mr. Friedberg has testified to that fact here. If that is so, that makes your entire audit incorrect, that throws your entire results off, doesn't it?

A. Not necessarily.

Mr. Sillman: If the Court please, I object. He has misstated what took place.

The Court: He can tell what would happen.

Mr. Sillman: Pardon me, Your Honor. I am not objecting to his giving the answer. I am objecting to Mr. Windom misstating the fact and then asking the witness for a conclusion.

The Court: Did not Mr. Friedberg testify that he did not always enter reorders?

Mr. Sillman: Mr. Friedberg testified that there were occasions when he did not reenter the order measurements in the order book for a previous customer, but those were entered in the cash book, so it got into income. His question implies something different.

Q. Is my assumption correct?

[fol. 990] A No.

Q. The failure to enter reorders wouldn't have thrown off your audit?

Mr. Sillman: Again, I object.

The Court: He may answer and explain.

A. I am saying that reentering of an order has nothing to do with the cash book, and if the cash book has the money in there that was derived from that sale, then my audit is correct.

Q. Listen carefully. Mr. Friedberg was unable in this court room to point out in his book any of the entries I inquired about as having been entered. I asked Mr. Friedberg, then, this question: Was it your policy not to reenter reorders? The answer was yes. Now, if that is true, sir, and I merely ask you to assume that that testimony is true, would that have affected your audit?

Mr. Sillman: Now, again, I am going to object because you can't assume that is true, which it definitely was not. Mr. Friedberg pointed to the Friedberg Loan items, which this witness testifies did go into income, and said that those entries were made in there and the deposit slips show that every single one of them were deposited in income, and now he is asking him to assume something——

The Court: The objection is sustained.

Col. Windom: Is it sustained on the basis that I am misstating the correct——

The Court: I do not think it is a correct statement of the testimony as given.

[fol. 991] Col. Windom: May we take a recess while the record is checked?

(A brief recess was taken.)

The Court: The objection is sustained.

By Col. Windom:

Q. Mr. Weiss, if Mr. Friedberg or Mrs. Friedberg, acting as bookkeeper on his behalf, had failed to enter certain items of business upon the records of the Buckeye Tailoring Company, that would have affected the outcome of your audit, would it have not?

A. When you say on the record, what records are you referring to: the cash records or other records?

Q. Yes.

A. Cash records?

Q. Yes.

A. Yes. If they wouldn't put it down, we would either have to find it from some other source——

Q. Is the answer yes or no?

A. I don't know as I get your question. I don't want to be——

Q. Will you please read it.

(Question read.)

A. Sure, it would affect the outcome of the audit.

Q. Mr. Weiss, you said that the Friedberg books and work sheet compared. Was it favorably, or very favorably?

A. Very favorably.

Q. Will you please take the 1947 work sheet and point [fol. 992] out just how favorable that is in relation to the cash book. Can you do that?

A. It is very close.

Q. I want you to point it out in figures, sir.

A. Well, the items you referred to a while ago were included in the Friedberg Loan items and deposited in the bank. Those checks for repeat orders were included in the deposit slips and deposited.

Q. Well, isn't it a fact, sir, the total sales as shown by the books, which you say were accurate, were \$45,510.46?

A. I beg your pardon. I guess you asked me a question.

(The question was read.)

A. No, the books show more than \$45,000.

Q. Do you have your audit with you?

A. No.

Q. Why didn't you bring it, sir? Can you get it?

A. Yes.

Q. What did you include in sales?

A. You have to include those items that are in the \$45,000 that you mentioned, plus the Friedberg Loan items which include these other sales.

Q. Why would you include the Friedberg Loan items in sales?

A. Certainly have to be included because they included sales. They are only called Friedberg Loan items.

Q. Then, that entry in the book was an incorrect entry, wasn't it?

A. Well, it started way back.

Q. Was it or wasn't it?

A. I wouldn't say it was an incorrect entry.

[fol. 993] Q. What do you call it?

A. It is their way of keeping record of it.

Q. Would you say that it was correct or incorrect? Yes or no?

A. That depends on what you mean by your question.

Q. Answer it yes or not and then explain.

A. All right, I will say no.

Q. Whose name was this safety deposit box in in the Market Exchange Bank that you went to?

A. I never saw the record on that.

Q. You know it was in the name Handler, don't you?

A. I was told so, yes.

Q. And, you have stated that you were familiar with attempts to manipulate books and to evade taxes?

A. Yes.

Q. You are an expert in this field?

A. Yes.

Q. Is the use of a name by Mr. Friedberg, not his own name, is that one of the common things that you run into, sir?

A. Well, lots of people have different names.

Q. Is that one of the common sources of evasion that you encounter, keeping a safety deposit box not in your own name?

A. With a certain class of people it is, yes.

Q. And, is this matter of listing items in the wrong category, such as loans when they are in fact income, is that one of those that you encounter?

A. No, sir.

[fol. 994] Q. You never encountered that before in the evasion of taxes?

A. No, no, I don't mean that. I meant that it was not one of those items of evasion.

Q. It is an item that you would encounter on evasion, isn't it?

A. No, not necessarily.

Q. The calling of an entry a loan rather than income?

A. That depends on how the thing got started. We went back into that matter, discovered how that came about. I am not surprised at it.

Q. Mr. Weiss, I am not asking you about your audit here. You have qualified yourself, I think, to be an expert. The Court has ruled that you are an expert. You have stated that you have had much experience with the manipulation of books and so on by people in an attempt to evade taxes. I am asking if one of those means that you have become familiar with, in your experience as a certified public accountant, isn't the incorrect listing, such as calling income a loan?

A. No.

Mr. Sillman: I suppose we ought to object generally to these questions.

The Court: No. This is cross examination. You qualified him as an expert.

Mr. Sillman: I am not serious about it.

The Court: He ought to be able to take care of himself.

Q. Is the answer yes or no?

A. I said no.

Q. That wouldn't be any indication?

[fol. 995] A. In this case it is no indication whatever.

Q. What about your average experience, which is what I am asking for, that experience as an expert, sir.

A. Well, I have run across income listed by different terminologies and never saw one listed as loans before.

Q. How can you show, sir, that the Friedberg Loans went into the income tax?

A. Belonged to the income tax?

Q. Yes.

A. You mean were taxable?

Q. How can you show that they actually were reported for tax purposes?

A. Well, when you take the sales that are accounted for in other ways, and then take the sales that were included in the Friedberg Loan, and add them up, you will get that sum.

Q. How do you know any sales were included in the Friedberg Loans?

A. Check his deposit slips. He has them marked on there.

Q. Did you ever check his deposit slips?

A. Test checked them here and there.

Q. When did you check them?

A. During the audit.

Q. Where did you check them?

A. Some of it was done at our office; some was done down there.

Q. You mean that a national bank let you take its deposit slips to your office?

[fol. 996] A. No.

Q. Where did you check those deposit slips?

A. I don't recall.

Q. As a matter of fact, you never checked those deposit slips?

A. I didn't check all of them.

Q. You didn't check any of them?

A. They had copies of slips down there.

Q. Who had copies?

A. Friedberg's had.

Q. Why weren't they turned over to Mr. Clager in connection with this audit?

Mr. Sillman: I object, if the Court please. There has been no question by Mr. Clager about specifically requesting these items.

The Court: Sustained.

Q. You are contending now, sir, that Mr. Friedberg had copies, retained copies, of bank deposit slips in his files, is that correct?

A. Yes, he had some.

Q. How many?

A. I wouldn't say now. I don't know.

Q. Was it ten or a hundred?

A. Oh, I wouldn't know.

Q. Mr. Weiss, you must have some recollection. What is your best estimate?

A. Oh, I wouldn't—we checked those items out as we go along. I don't make a recollection of just how many there [fol. 997] are. There was quite a few of them, a whole year.

Q. You have been subpoenaed in this case for sometime, have you not?

A. Yes.

Q. You testified before in it. You knew generally the type of examination that was going to be made. Now, approximately how many of those deposit slips do you say Mr. Friedberg had?

A. I wouldn't be able to say.

Q. Was it more or less than a hundred?

A. Oh, less than that.

Q. Was it more or less than fifty?

A. I wouldn't know?

Q. You just don't know?

A. No.

Q. Then, you did not check to see that those Friedberg Loan items went into the bank, did you?

A. I said a while ago I checked.

Q. How did you check it?

A. I checked the deposit slips, not every one, but spot checked them.

Q. How could you check every one? If you spot checked, sir, if there were less than fifty, would you spot check less than fifty deposit slips?

A. Yes, if there were less than fifty I probably wouldn't check them all.

Q. How many would you check?

[fol. 998] A. Not more than half of them.

Q. Would you call that a verification of those books?

A. Yes. When you take the whole amount of it and add it up, and the whole amount of deposit and add it up and they come out together, why you don't as a rule go and spot check except where they look unusual.

Q. Did they come out together or did they come out approximately \$20,000 apart, sir?

A. Came out together.

Q. And, you don't have your audit with you?

A. No.

Q. Yet you knew you were going to be examined about it?

A. Nobody asked me for the audit.

Q. Just what period of time did you audit for Mr. Friedberg?

A. 1947, calendar year.

Q. Did you go back of that?

A. No.

Q. Why not?

A. Wasn't asked to.

Q. You seem to have knowledge or to have made some examination back of '47. Why did you do that?

A. In making an examination for '47 we naturally have to go back on certain items in order to determine the accuracy in '47.

Q. How far did you go back?

A. Well, for instance, that matter of Friedberg Loans, that excess amount mentioned on the tax work sheets. When we run into that we went back and verified where it [fol. 999] came from, when it came.

Q. And, what other items did you go back to '47 on?

A. Oh, I didn't know—well, take his method of reporting his income, this matter of those Friedberg Loans. We went back of his records in a general way to verify that, his method of doing business.

Q. Now, you say you discussed the matter in the spring of 1938 of enlarging the business?

A. Yes.

Q. Mr. Friedberg indicated that he could put in himself from \$45,000 to—did I understand the high figure to be \$60,000, sir?

A. That's right.

Q. Is that correct?

A. That's right.

Q. That he told you he had that much money himself?

A. Well, he made the remark that he could take care of it. I asked him if he could take care of it and he said he

Q. Had you or hadn't you made up income tax reports for him prior to that time?

A. For him personally?

Q. Prior to the spring of 1938?

A. I made up the income tax returns for the Buckeye Tailoring Company.

Q. That's the corporation. I am talking about David Friedberg as an individual.

A. I am not sure. I am rather doubtful that I made [fol. 1000] them up in the first years, either '34, '35 or '36.

Q. Do you have any recollection of him—

A. I don't even recollect making them up after that.

Q. Do you have any recollection at all of handling any returns or any audits for him that would justify him in stating that he had that much in cash, sir?

A. No.

Q. Now, I hand you what has been marked Government's Exhibit 30, with particular reference to the large sheet, or the rear of it, Mr. Weiss. Those are personal property tax returns filed in Franklin County, are they not?

A. Yes.

Q. Signed by David Friedberg and notarized before yourself as notary, is that right?

A. That's right.

Q. Did you prepare those, sir?

A. Well, we probably did, if I notarized them we made them up.

Q. Did you or didn't you?

A. Wait until I look to see if I can find—I think we made them up.

Q. All right, Mr. Weiss, if in the spring of 1938 Mr. Friedberg represented to you that he could put \$60,000 in cash into the Buckeye Tailoring Company, why is there no cash or stock entry in that tax return?

A. He did not indicate to me that he had any stock.

Q. What does item 10 call for in there, sir? Doesn't it call for cash?

[fol. 1001] A. Yes. I didn't know at that time whether he had cash or not. He didn't indicate whether he had.

Q. Did you ask him?

A. I didn't ask him.

Q. You made up a personal property return and didn't ask him?

A. That's right.

Q. Then, you later went to his safety deposit box in the name of Handler and found a very large quantity of bonds and cash, didn't you?

A. That's right.

Q. Why didn't you file an amended return?

A. Well, it wasn't my responsibility to file an amended return.

Q. You were his accountant, were you not?

A. That's right.

Q. Did you suggest to him that he file an amended return?

A. I don't recall that I said anything. I don't think I did.

Q. Wouldn't you normally have suggested that to him?

A. I haven't yet seen a fellow that returned his cash for personal property tax purposes.

Q. You don't return cash not on deposit in a bank?

A. Not unless a man declares it. That's up to him.

Q. Did he make up a work sheet for these like he did for his income tax?

A. No, sir. This only included his business.

Q. This doesn't include his business?

A. This included his business.

[fol. 1002] Q. It only included his business?

A. That's right.

Q. Well, if it only included his business, Mr. Weiss, and you have the Treasurer's complete record there before you, you will notice he filed personal property returns in '35, '36 and '37, and he didn't have a business then. Is your answer still the same now?

A. Those back in '35, '36 and '37, I don't know anything about those.

Q. Well, the name is on there. That's an official record of the Treasurer of this County, sir.

A. True enough, as far as his return is concerned; but I do not recall making a return, and I don't think I made any at that time.

Q. The Treasurer has a record of them, so they must have been made, isn't that right?

A. Made by somebody, but they are for very small amounts, so he probably wouldn't call me in to make a return for \$1.68 worth of tax.

Q. Is that the best answer you can give?

A. My answer is that I do not think I made his returns until 1944.

Q. That's the first one you made?

A. I am talking about his personal returns, whether they were county returns or whether they were income tax returns.

Q. Well, actually, Mr. Weiss, if you will check that you will find you made it as far back as 1924, which was made in 1947 on your large form.

A. I don't know. I would have to go——

Q. What is your best answer as to why cash and any stocks were not included on that form?

[fol. 1003] A. He didn't indicate to me at the time, in 1938, at the time of our discussion whether he had that in cash form or whether he had it in bonds or what he had it in. If he had it in Government bonds, it wasn't taxable.

Q. When did Mr. Friedberg first tell you, sir, that the so-called Friedberg Loan items were income?

A. During the time of the audit.

Q. Did you disclose that information to Mr. Clager or any of the agents during the investigation?

A. No, I don't think so.

Q. You knew it during the investigation and you have no right of privilege, have you, under the law?

A. Well, you are talking about the knowledge of the Friedberg Loans?

Q. That's right.

A. Well, they had the same books.

Q. Does that show on the books that the Friedberg Loans are income, sir?

A. They were deposited in the bank, and he reported them for income.

Q. Does that show on the books that they were deposited in the bank, sir?

A. Yes.

Q. What books does it show in?

A. In the cash book.

Q. There is Exhibit No. 2. You point out any place in [fol. 1004] that one where it shows that any of the Friedberg Loan items were deposited in the bank. There are the other two cash books and the same question goes as to all three of them.

Mr. Sillman: There are none in the other books. No. 2.
Col. Windom: That's the one I gave him.

A. Now, is your question whether this shows whether they are deposited in the bank?

Q. You said, if I understood you correctly, that the cash book showed that the loans were deposited in the bank.

A. No, I shouldn't put it that way, if I did. What I meant to say was that the amounts deposited in the banks correspond with the cash book.

Q. Now, Mr. Weiss, if those had in fact been bona fide loans they would have gone in the bank, wouldn't they?

A. Oh, yes.

Q. Therefore, there would be nothing unusual in finding that amount deposited in the bank, would there? That's right, isn't it, if they were loans they would have been deposited?

A. Yes. They are not called loans in here in '47, as far as I can see.

Q. Well, Mr. Friedberg and Mrs. Friedberg says they were, and if they were considered loans they would have been deductible, wouldn't they, just like you explained on direct examination? Isn't that true?

A. Yes, if they had been loans, yes.

Q. And, if they were sales, they were not deductible?

A. That's right.

[fol. 1005] Q. Now, you having had this disclosed to you during your audit, why didn't you tell Mr. Clager about it when Mr. Clager talked to you?

A. Mr. Clager and I talked about many things, and I don't recall whether that was discussed or not.

Q. You gave a statement in writing, which we have, don't we?

A. Yes. Yes; he was in the office various times.

Q. Why didn't you tell Mr. Clager about it?

A. Well, I don't recall that I didn't tell him. There was no particular—

Q. Will you glance over that statement, please, and see whether you did or did not tell Mr. Clager anything about it?

A. This statement was made before the Intelligence Division in the Atlas Building, and this doesn't seem to cover any such question.

Q. Nothing like that was included?

A. Didn't ask me a question like that in there, no.

Q. Did you tell Mr. Friedberg to disclose the true status of those entries when you found out yourself what the truth was?

Mr. Sillman: I object to the form of the question.

The Court: Overruled.

Q. Did you, sir, or not?

A. Did I advise him—I didn't quite get your question.

Q. Did you advise Mr. Friedberg to tell the Bureau of Internal Revenue what those entries were after you yourself found out the true nature of them?

A. No, I didn't.

[fol. 1006] Q. Why not?

A. I didn't advise him not to disclose.

Q. Mr. Weiss, are you in any way implicated in this case?

Mr. Sillman: I object to the form of that.

A. These amounts included in the Friedberg Loans are similar to what's done by other firms. I have more than one, perfectly above any suspicion of any sort, that enter sales that are out of the ordinary in one group and then return them under some name in the general records. You have to go back to other records to get the detail. This is a very similar method.

Q. Do you mean to tell this Court and Jury that's a common practice to carry income items as loans or under some nondescriptive entry, sir?

A. In the 1947 records they were carried as D. Friedberg; \$300 one time, \$500 another, \$200 another.

Q. Are you telling this Court and jury that that is a common practice in the accounting field?

A. That is done a great deal.

Q. Yes or no, is it a common practice?

A. Yes.

Q. Now, will you give us the name of just one individual that does it?

A. I can't give you the name of anybody.

Q. Remember, sir a certified public accountant has no privilege.

A. I am confidential in my relations to my clients.

Q. You can't give us the names?

A. What I am talking about is something that is perfectly legitimate honest and aboveboard. I am not talking about men of that other stripe.

[fol. 1007] Q. Now, what is honest and aboveboard?

A. When they account for the income fully, then they are honest and aboveboard, whether they call it by one name or another. It is no particular concern of mine, as long as they account for it.

Q. You mean it is proper for me, if I carry the thing as an advance from myself, that this is a proper entry for my income?

Mr. Sillman: If the Court please, the witness has injected a fact that they are not always termed advances.

The Court: Overruled.

Q. Is that proper, Mr. Weiss?

A. I only answered for 1947. It was under the name D. Friedberg. If he wanted to put those miscellaneous items under that particular name and enter them in his cash book, that's his privilege, as long as he enters them in there and puts them all in there and they go to the bank and are accounted for, I am satisfied.

Q. Is that a proper method of bookkeeping?

A. It is not the best method.

Q. Is it a proper method?

A. I wouldn't say whether it is proper or not. As far as for our point of view is concerned, as a CPA, we would prefer to have them listed a little different, yes.

Q. You said that you have known of a considerable num-

ber of people who do that, and I have asked you to name one.

A. I am talking about different firms that list their miscellaneous income under one title or another, one name or another, whatever it happens to be. Sometimes it [fol. 1008] is some person that is responsible for it, it is under his name, bring it into cost and put it under income periodically.

Q. Just who does it?

A. (No response.)

Col. Windom: That's all.

Redirect examination.

By Mr. Sillman:

Q. Mr. Weiss, let's see if we can't clarify this great mystery that Mr. Windom has propounded. Take the cash book journal for the year of 1947.

The Court: The Court will have to call the jury's attention to your statement. "This great mystery" is an improper statement. The jury will disregard that statement. That is Mr. Sillman's viewpoint.

Q. I want to clarify some facts here. Now, Mr. Weiss, I want you to first of all tell us what Exhibit 2 is and what years it covers?

A. It is cash receipts record.

Q. When does it start?

A. Begins with November 17, 1944.

Q. And, when does it end?

A. And, ends December 24.

Q. What year, please.

A. 1947.

Q. So that you have got from toward the end of '44 to '47 in that one book, is that right?

[fol. 1009] A. That's right.

Q. Now, I am going to hand you, Mr. Weiss, Exhibit No. 6. Just give us the years, roughly, in that.

A. '43 and '44.

Q. Can you point to a single 1947 item in that book?

A. No, not in this here.

Q. Now, I am going to hand you Defendant's Exhibit 7. Just give us the years that are involved there?

A. This is 1944.

Q. How late does it go up?

A. Begins April 20.

Q. Get to the last page. I just want the year.

A. Goes up to November 16.

Q. That's in '44?

A. I can't tell. It is marked '44 on the outside so it must be.

Q. Now, I just want to ask you, Mr. Weiss, can you point to a single transaction in the year of '45, '46 and '47 in either one of those books? Are there entries in either of those books for the year of '47?

A. No, not in those books.

Q. Yet, you are a certified public accountant. Now, if you want to look for the year of '47, what book do you look in?

A. Look in the one that's marked '47.

Q. That's correct. You wouldn't find it in the others, would you?

A. No.

Col. Windom: Object.

[fol. 1010] Mr. Sillman: That's been the line of your questioning, sir.

The Court: You are in chief. He was in cross examination, so you cannot testify.

Mr. Sillman: I agree, but I thought it was so highly unfair, that type of cross examination.

The Court: Just a moment. Those remarks are improper in the presence of the jury and the Court will have to admonish counsel that they are improper.

Mr. Sillman: I am sorry, sir.

Q. Now, Mr. Weiss, we are going to now see if we can show how you know that cash in the receipts journal actually went into the income tax return. Take the year of '47 and please keep the book of '47. Tell me when you have got it open to any page in '47. I don't care what page.

A. All right.

Q. Now, pick any specific item at random, any specific item that is entered in detail and read me that name.

A. Well, here is F. & R. Lazarus Company, \$624.80.

Q. And, what is the date?

A. Date is July 17, 1947.

Q. Now, how do you know or how could you know whether that item did or did not—that specific item—go into income?

A. It would be on the deposit.

Q. What would you have to do to find out if it went into income?

A. Well, we added up the whole thing, all the income, all the items, and checked them against both the income that he [fol. 1011] reported and the deposits in the bank.

Q. In other words, Mr. Weiss, isn't this a fact, in order to determine whether a specific item went into the income tax return, you have to total up all of the items in the cash receipts journal that were included in the income tax return?

A. That's right.

Q. Isn't that correct?

A. That's right.

Q. When you fill out an income tax return, do you ever list the names of all of the customers who paid money, who comprised the income, in detail?

A. No.

Q. Is that proper or is it improper?

A. That would be improper.

Q. Is there any requirement any place, in any regulation or otherwise, that says that you must list the names of every customer in detail, spell his name out, and the amount you received from him in the income tax return?

A. No.

Q. What do you put in income tax returns, dollars or names?

A. Put the total of income.

Q. Now, if you take a specific item, we will say a made to measure suit, with the name of the customer entered in detail, how would you ever know whether all of those items were included in the income tax return? What would you do?

[fol. 1012] A. Check it through the receipt book.

Q. Now, then, Mr. Clager, I assume, has run a tape on that figure. The exact amount for the year of '47 is \$45,510.46. That's the tape that he ran, or the figure that Mr. Windom supplied you. Now, you look to the 1947 work sheet and tell me whether \$45,510 was included in income or whether some other figure was included. Let's see if Mr. Clager added all the figures up that went into income.

A. No, the figure here is \$65,623.91.

Q. Just a moment. How much?

A. You want the gross income?

Q. I want the gross income.

A. \$73,084.09.

Q. \$73,084.09?

A. Yes.

Q. Now, that's how much was included in the income tax work sheet?

A. That's right.

Q. Now, by Mr. Clager's mathematics he has \$45,510.46. That's all he could add up in the book. Is that a correct figure or not?

A. That's not correct.

Q. What's not correct?

A. The \$45,000.

Q. That is the figure that Mr. Windom gave you. They just gave you a figure, didn't they?

A. Well, that included the wholesale and retail.

Q. Yes, but it didn't include all the income, did it?
[fol. 1013] A. No.

Col. Windom: I object.

The Court: Yes. Sustained.

Q. State whether that figure of \$45,000 which Mr. Windom gave you included all of Mr. Friedberg's income for the year of '47?

A. I- did not.

Q. And, state what amount of income Mr. Friedberg himself put down on his income tax work sheets?

A. He put down \$73,084.09.

Q. Then, there is a shortage of some \$20,000 on the work sheet, isn't there?

A. No.

Q. The shortage is in the figure they gave you, is that correct?

A. That's right.

Q. Now, what is the fact when you take the cash journal in which a man enters his income, and his income consists, as the testimony has shown, of income from wholesale sales and income from retail made to measure sales, and income from stock suit sales and miscellaneous income, additional miscellaneous income from cleaning and pressing and alterations, if you want to know how much income the man has put down in his book, do you add part of it up or do you add it all up?

A. You include it all.

Q. Is it correct or incorrect, is it true or false, to add up part of the man's income?

A. We wouldn't do that.

[fol. 1014] Q. Would there be any basis for that if you wanted to really determine what his income was, Mr. Weiss?

A. No, you have got to add it all, if you are going to determine his income.

Q. Now, if you were asked to tell a jury how much income Mr. Friedberg had during the year of '47, would you think of adding up only part of the income on his books and coming up with only \$45,510.46, when more was on there?

A. No, we don't do that.

Q. Would you consider that fair or true?

A. No, it wouldn't be correct.

Q. It wouldn't be correct, would it?

A. No.

Q. And, what is the fact, with reference to whether or not Mr. Friedberg's book does in fact show this \$73,084.09 figure rather than the \$45,510.46 partial figure?

A. Well, you include those amounts that are under D. Friedberg's name and you come to the \$73,000 figure.

Q. In other words, the \$73,000 figure includes the D. Friedberg—incidentally—I withdraw that. I don't know that myself. But, in the year of '47 are they called D. Friedberg or is the word loan on there?

A. No, just D. Friedberg.

Q. They are not entered with the word "loan."

A. No.

Q. Now, when you add all of the D. Friedberg items, that [fol. 1015] is, the round figure D. Friedberg items that appear in that cash book, when you add the whole cash book up do you come up with the figure of \$73,084.09, or do you come up with the other figure?

A. No, you come up with the \$73,000.

Q. Now, when you look to Mr. Friedberg's income tax, did he report and pay income, that is gross income, on the \$45,000 item, or did he report and pay income on the \$73,000 gross income item?

A. On the \$73,000.

Q. If a customer's name is listed in detail, Mr. Weiss, in the cash journal, as an accountant, as an expert, is there any basis for you or any other so-called expert saying that that particular item of income went into income in the income tax return, unless you add up the dollar amounts?

A. You have to add up the dollar amounts.

Q. Now, when you add up the dollar amounts to determine how much income a man has, explain to this jury what difference it makes whether ten dollars, which is entered in the book, is called Smith or Jones, if it is treated as income?

A. Doesn't make any difference.

Q. Suppose it is called Brown. Does it make any difference?

A. No difference.

Q. Suppose it is called D. Friedberg?

A. That doesn't make any difference so long as it goes into income.

Q. Suppose it is called D. Friedberg Loan?

A. That wouldn't make any difference.

Q. In fact, in this case it did go into income, didn't it? [fol. 1016] A. It did.

Q. Mr. Windom asked you this question, sir. He said that if Mr. Friedberg or Mrs. Friedberg failed to enter items of income, would it have affected your audit, and you said, of course it would. I am going to ask you the converse question. If they included the income, as you have

testified, how would it affect your audit? If, instead of omitting it they included it, how would it affect your audit?

A. The audit stands as made.

Q. Now, tell the jury whether your audit stands for the year of '47, that you made?

A. As far as I am concerned, my audit stands.

Col. Windom: I object to the question. I don't know what it means. I don't think he does.

Q. Do you understand what I meant?

A. Yes, I think I do.

Mr. Sillman: That's all.

Recross examination.

By Col. Windom:

Q. Mr. Weiss, when I asked you about 1947, what book did I hand you first?

A. I don't recall which one you handed me first.

Q. It was Exhibit No. 2, wasn't it?

A. I don't know them by number. This is No. 3.

Q. Turn the outside cover of that book and read the fly [fol. 1017] page and see what is marked.

A. Exhibit 2 inside here.

Q. That's the one I handed you first, wasn't it?

A. OK.

Q. Mr. Weiss, at any place in that book are any years, either calendar or fiscal, totaled at any place in that book?

Mr. Sillman: Object on the ground of repetition. He has asked that question three times and the answer was no.

The Court: He may answer again.

A. The answer is no.

Q. Where did you get the total, sir?

A. There are sub-totals in here for each day. We added up the sheets, each page.

Q. You ran an adding machine tape on it?

A. Yes.

Q. Did Mr. Friedberg pay tax on \$73,000 in 1947?

A. That was the basis—that was his gross income as reported.

Q. What did he pay tax on?

A. Well, he paid tax on—the loans repaid \$5380.93 was taken off. Some accommodation checks were deducted.

Q. What did he pay tax on in 1947?

A. Paid tax on his net income.

Q. What did he pay tax on in 1947, sir?

Mr. Sillman: What do you mean? Net income or what?

Col. Windom: He knows what I mean.

[fol. 1018] A. Paid tax on \$7,723.05.

Q. Mr. Weiss, do you know of your own knowledge that all of the Smith's and Brown's and Jones' are carried in that cash book?

A. We found nothing to indicate that they were not.

Q. Do you or don't you know of your own knowledge that they are or are not, sir?

A. As far as I know, they are all accounted for.

Q. How do you know that?

A. Well, when you make an audit.

Q. Did you compare that cash book with the sales record?

A. Yes.

Q. And, what does it show, sir?

A. It doesn't show any discrepancy.

Q. You mean you can find Mr. Roderick listed in that cash book, who purchased a suit?

A. Not necessarily. A number of those stock sales and such like are under D. Friedberg.

Q. That didn't happen to be a stock sale, sir. That was a made to measure suit. Mr. Roderick has testified.

A. It even could be in that for all I know.

Q. You didn't, in fact, compare the cash book with the order book, did you?

A. Certainly.

Q. What did you do about those reorders that weren't entered, sir?

A. They were in the cash book.

[fols. 1019-1020] Q. They were in the cash book?

A. Yes.

Q. Mr. Friedberg was unable to point those out. Can you point them out?

A. No. They are under the D. Friedberg amounts.

Q. Can you point them out or not?

A. I can't point them out on this cash book, no, because they are covered by the D. Friedberg amounts, \$300, \$500 and so on.

Col. Windom: That's all.

The Court: You are excused. Call your next witness.

GUY FORSYTHE, being first duly sworn as provided by law, was examined and testified as follows:

Direct examination.

By Mr. Sillman:

Q. Will you state your name, please?

A. Guy Forsythe.

Q. Where do you live?

A. 185 South Westmore Avenue, Columbus, Ohio.

Q. What is your profession, sir?

A. I am a Certified Public Accountant.

Q. With whom are you associated?

A. I am associated with the firm of Keller, Kirschner, Martin and Clinger at 33 North High Street.

[fols. 1021-1023] Q. Mr. Forsythe, when were you first called into this case?

A. In October 1949.

[fol. 1024] A. The third book, which was Exhibit 2, contains the same type of entries as to the income; that is, it shows the customers names and the amounts paid. In the early part there were also miscellaneous items, small items, for cleaning, pressing and alterations. Then, in this book, also, there were amounts which were shown as Friedberg Loans at fairly regular intervals. I believe the first of which was in March of 1945.

Q. That is, the first entry under one of those names is in 1945?

A. Yes, sir.

Q. March of 1945?

[fol. 1025] A. March of 1945.

Q. There were none prior to that date?

A. There had been none in 1944.

Q. Now, will you turn to the 1947 part of that Exhibit 2 and tell me whether the listings appear as Friedberg Loan or as Friedberg, or D. Friedberg? Do they have the word loan on them?

A. They are listed as D. Friedberg.

Q. But, also in round figures?

A. Yes, sir.

Q. Some are listed as D. Friedberg Loan and some later on are listed as D. Friedberg without the word loan?

A. Yes, sir.

Q. Now, on the basis of your examination, were those items treated as income?

A. Yes, sir, they were.

Q. Were they in fact included as income?

A. They were.

Q. And were they, in fact, carried into the returns, the income tax returns, as income?

A. They were.

Q. Does that complete your description of these records?

A. Yes.

Q. Now, concerning the cash receipts journal—that's what you call these books?

A. That's right.

[Vol. 1026] Q. —from an accounting standpoint, cash receipts journal?

A. Yes, sir.

Q. Is that correct?

A. That's right.

Q. Did your examination disclose whether the cash receipts journal recorded the wholesale business?

A. It did.

Q. And, we are also talking about Mr. Friedberg's business in all of my questions. Buckeye Tailoring Company, American Mill Tailors. State whether they did or did not record the retail sales of made to measure transactions?

A. They did.

Q. You have already stated that there were some—I don't think you described them. What items of income were included in this lumped-together income item called D. Friedberg Loan?

A. Well, that would be the items of ready made stock suit sales and his miscellaneous receipts from cleaning, pressing, alterations, and things of that nature.

Q. In the year of '44 there were no entries D. Friedberg or similar entries?

A. No, sir.

Q. And, how was the miscellaneous income in the year of 1944 carried in the cash receipts journal?

A. It was listed as cleaning, pressing, alterations and things of that nature.

[fol. 1027] Q. Did the cash receipts journal show the name of every customer who had a suit cleaned or pressed or anything like that?

A. No, sir, it did not.

Q. Were they all lumped together; that is, the items in gross?

A. Oh, periodically there were deposits which would have been an accumulation.

Q. In other words, the names of each person who paid Mr. Friedberg income for cleaning, pressing, alterations, repairing, they were not listed in detail in this cash journal, were they?

A. No, sir.

Q. But, the gross sum under the heading cleaning, pressing and so forth, were listed in lump sums?

A. Yes, sir.

Col. Windom: I object to the leading question.

The Court: Yes. Sustained.

Q. Is that a correct statement? Have I misstated it?

A. The cleaning, pressing and alteration amounts were reported or carried into the cash receipts book in odd amounts with no customers names shown.

Q. Then you gave us the date of March of 1945 when the Friedberg entries appeared, which you said were treated as miscellaneous income and carried into the income tax returns. Did those entries include income from sources other than cleaning and pressing, as the previous entries had?

A. I don't believe I get your question.

Q. In March of 1945 when the miscellaneous income [fol. 1028] entries appear under the captior "Friedberg"

or "Friedberg Loan", or whatever they may be, did the miscellaneous income under those items include something in addition to cleaning, pressing, alteration and repairing?

Col. Windom: I object to the leading question.

The Court: Sustained.

Q. Tell me what those items included, the D. Friedberg or Friedberg Loan?

A. After March of 1945 the items included cleaning, pressing, alterations and receipts from sale of stock suits.

Q. In all three of the journals, Mr. Forsythe, how are the entries made with reference to time or chronology?

A. Well, in the cash receipts book it was a daily listing.

Q. In other words, they are entered day by day, is that what you mean?

A. Yes, day by day.

The Court: I think we will adjourn until tomorrow morning at ten o'clock. Ladies and gentlemen of the jury, you must follow the instructions heretofore given you by the Court.

(A recess was taken until January 8, 1942 at ten o'clock a.m.)

TUESDAY MORNING SESSION

January 8, 1952

[fol. 1029] GUY FORSYTHE, resuming the stand, testified further as follows:

Direct examination (Cont'd.).

By Mr. Sillman:

Q. Mr. Forsythe, I am handing you what have been marked Defendant's Exhibits 8, 9, 10, 11, and 12. Will you please identify those exhibits?

A. These are the records of the retail made to measure suits or garments.

Q. What years are involved?

A. Exhibit 8 includes—beg pardon—December 28, 1942.

Q. If you will pardon me. If you will turn to the back, you will get to the '44. That has some earlier years on it.

A. It continues through January 6, 1944.

Q. So that first exhibit picks up the first part of '44?

A. The first few days, yes.

Q. Now, just look through the others and tell me if they don't continue on for the years of '45, '46 and '47? We are interested in knowing whether we have the four years.

A. 1944, 1945, 1946 and 1947, yes.

Q. Mr. Forsythe, those are what we have been calling order book pages. Is that what you have understood them to be?

A. That's right.

Q. And, in making your audit, did you examine those?

A. I did.

Q. And, for all of the years '44 through '47 that you have indicated?

[fol. 1030] A. That is right.

Q. What's at the top of the page on those order book pages, what name?

A. American Mill Tailors.

Q. I am handing you Defendant's Exhibits 13, 14 and 15. Please identify those, Mr. Forsythe?

A. These are copies of the wholesale invoices for the years of 1945, 1946 and 1947.

Q. Were you able to find any for the year of '44?

A. I was not.

Q. In your audit did you examine those?

A. I did.

Q. Now, Mr. Forsythe, without attempting to hand you all of these boxes, let me ask whether the cartons which appears here and are marked Exhibits 16, 17, 18 and 19—let me ask you if you furnished those to me, or sent them up to the court room from your office?

A. I did.

Q. And, now, are you familiar, without stepping down from the stand, with knowing what those records are? Well, you can step down here.

A. (Witness examines the records.)

Q. While you are there, will you also look at the con

tents of the boxes you furnished me, which we marked 20, 21 and 22.

Now, Mr. Forsythe, Exhibits 16, 17, 18 and 19 in these boxes that you have examined, what are those?

A. Those are the invoices which were furnished to Mr. Friedberg by his suppliers.

[fol. 1031] Q. For what years?

A. For the years 1944, 1945, 1946 and 1947.

Q. For all four years.

A. Yes.

Q. And, did you examine those in the course of your audit?

A. I examined 1944, 1945 and 1946. I did not examine 1947.

Q. And, why did you not examine '47. Was there a reason for it?

A. Mr. Weiss had already started examination on that year. I did not make a complete examination.

Q. Mr. Weiss had started an audit for '47?

A. That's right.

Q. And you were not making a complete audit for '47?

A. That is correct.

Q. Now, how about the bank checks and statements in Exhibits 20, 21 and 22, and the check stubs, I think, in Exhibit 22.

A. Those are the cancelled checks which were written by the business and cashed and returned by the bank to Mr. Friedberg along with his bank statements, or statements furnished by the bank for the years 1945, 1946 and 1947.

Q. Were you able to find any cancelled checks or stubs for the year '44?

A. I did not.

Q. When did you say you commenced your audit?

A. October of 1949.

[fol. 1032] Q. October of 1949?

A. Yes, that's right, October of '49.

Q. And that, then, of course, was a considerable time after Mr. Clager and the other agents had completed their audit?

A. I really don't know when they completed their audit.

Q. Well, did you ever return any of these records to Mr. Clager or any of the other agents?

A. No, I did not.

Q. When you were through with them, you just kept them in your room there until this trial?

A. That's right.

Q. In other words, the records have been in your possession from the time that you examined them and made your audit until the time that this case was set down for trial?

A. That's correct.

Q. And was sent over here. So that if they were examined by the agents, Mr. Clager, or any of them, they would have had to have been examined before you got them?

Col. Windom: I object to the leading question.

The Court: Sustained.

Q. On the basis of the fact that you kept these records in your office from the time you had them, would you say that if Mr. Clager examined the records——

Col. Windom: I object.

Mr. Sillman: Well, it is not important one way or the other. It is obvious.

[fol. 1033] Q. Did you examine the cash journal for 1944?

A. I did.

Q. What does it record? This is 1944.

A. The cash journal recorded the receipts of cash and checks during the year 1944 from customers of the business.

Q. And, what types of business were recorded in the cash receipts journal in the year of '44?

A. In the year of '44 were the wholesale receipts, receipts from retail, made to measure and the miscellaneous receipts from cleaning, pressing and alterations. There were some miscellaneous receipts, also, for what were designated as accommodation items.

Q. We are having a little difficulty hearing you, Mr. Forsythe. Will you just talk up a little bit.

Were there any entries such as appeared in subsequent years—Friedberg or D. Friedberg Loan—in the year of '44?

A. Not in the year 1944.

Q. Have you made any comparison of the total receipts recorded in the 1944 cash journal with the total receipts shown on Mr. Friedberg's income tax work sheets for the year of '44?

A. I did.

Q. And, how do they compare?

A. They were substantially the same. There was some little difference between the two figures. Do you want those exact figures.

Q. Well, I think you might as well, if you have them available.

[fol. 1034] A. The total gross income reported on the tax return for the year 1944 was \$61,831.83. The total income, which I computed for that year would have been \$64,700.26.

Q. Have you attempted to reconcile the difference in those figures?

A. No, sir. I had attempted to reconcile but I was unable to do so.

Q. In your opinion, as an expert, do you consider that to be a favorable comparison?

A. I wouldn't say it was too favorable. I wouldn't say it was the worst I had ever seen. I hardly know how to answer your question.

Q. Now, how about the comparison between the figures which appear on the work sheet. Is that the figure you have given me, or from the income tax return?

A. I gave you the figure from the income tax return.

Q. What is the gross income shown on the income tax work sheet?

A. \$63,714.59.

Q. How does that compare with the cash journal figure? Give that again, please.

Q. The total cash journal figure, before excluding accommodation items, was \$66,346.77.

Q. Now, with the accommodation items to be included—or, were they to be excluded?

A. They were to be excluded in computing the taxable income.

Q. Now, did you exclude them?

A. I did.

Q. And, after you excluded those items, what's the balance figure?

[fol. 1035] A. \$64,700.26.

Q. The difference is approximately \$1000, as I get it, after you made an adjustment for the accommodation items?

A. No, the difference is about \$3000.

Q. You gave me a figure of \$64,700.26. Maybe I haven't understood you, Mr. Forsythe. Then you gave me another figure of \$63,714.

A. Oh, the \$63,714.59 was the gross receipts shown on the work sheet for the year 1944. From that had been deducted accommodation items, which left a net figure carried into the income tax return of \$61,831.83. Now, on my computations—

Q. Pardon me a minute. The first figure that you have given me, because I haven't understood you—\$63,714.59, that is the figure shown on the income tax work sheet?

A. That was on the work sheet that was in the income tax return, or in the pencil copy of the income tax.

Q. Incidentally, I don't think I asked you whether you did or didn't examine those work sheets, but apparently you did.

A. I did.

Q. And, did you also examine them for subsequent years?

A. Yes, sir.

Q. Now, the first figure, \$63,714 is the amount shown on the 1944 income tax work sheet?

A. That is right.

Q. And, you said that certain items were properly eliminated or deducted from that which you designated as accommodation items?

[fol. 1036] A. That's right.

Q. Now, after you eliminated those items what was the figure you had?

A. The figure left there, which was carried into the income tax returns, was \$61,831.83.

Q. And, were those items properly eliminated, the accommodation items? Should they have been included in the income or eliminated?

A. No, accommodation items would not constitute income.

Q. Then, if they didn't constitute income, they should have been subtracted, is that what you mean?

A. Correct.

Q. Did you analyze the cash journal for the years of '45, '46 and '46?

A. I did.

Q. Turning to the cash journal, will you tell us the date of the first Friedberg Loan or D. Friedberg entry?

A. The first entry was recorded under the date of March 22, 1945.

Q. And, what is that entry, so we will be able to identify it?

A. That was an entry showing \$275 coming into the business, apparently in the form of a loan.

Q. And, what legend is written beside the item?

A. D. Friedberg Loan.

Q. Now, from that point on did your examination reveal other entries, similar D. Friedberg or D. Friedberg Loan?

A. Yes, sir.

[fol. 1037] Q. Were some of them with the words "Loan" and some without the word "Loan"?

A. That's right.

Q. At any rate, they had the name Friedberg or D. Friedberg?

A. That is correct.

Q. And, either with "Loan" or without "Loan."

A. That is correct.

Q. And, those Friedberg items, as I will call them, or Friedberg entries, state whether or not they were in lump sum figures?

A. They were in round figures.

Q. In all instances?

A. I don't recall any that were not.

Q. Now, did you compare the total receipts recorded in the cash journal as wholesale, retail or miscellaneous, for the year of 1945, with the total receipts shown by Mr. Friedberg on his income tax work sheets?

A. I did.

Q. That's the year of 1945. Will you give us that comparison?

A. On the work sheet for the year 1945 the gross receipts were listed as \$39,308.35. From that there was a deduction for accommodation items of \$1836.70. The balance, which was carried into the income tax return, was \$37,471.65.

Q. How is your comparison with the cash journal?

A. My analysis of the cash journal showed total receipts of \$39,987.17, less accommodation items of \$1993.11, which would leave taxable net income of—gross income not taxable of \$37,994.06.

[fol. 1038] Q. Now, the comparison, then, between the gross income shown on the income tax work sheets and carried into the income tax return, and the cash journal, is \$37,471.65?

A. That's right.

Q. And \$37,994.06?

A. That is correct.

Q. That is a pretty close comparison, isn't it?

Col. Windom: I object to the statement.

The Court: Sustained.

Q. Have you compared the total receipts recorded in the cash journal as wholesale, retail or miscellaneous for the year of 1946 with the total receipts shown on Mr. Friedberg's income tax work sheets and carried into his income tax return?

A. I have.

Q. Give us that comparison, please.

A. The total receipts which were shown on the income tax work sheet was \$61,857.28, from which there was deducted accommodation items of \$3074.92, leaving a balance which was carried into the tax return of \$58,782.36.

Q. Now, give us your figures on the cash journal that you audited?

A. My receipts in the cash journal—total receipts of \$60,958.53, less accommodation items of \$3347.60, leaving a balance of \$57,610.93.

Q. Now, the difference between the amount carried into the return for that year and the amount analyzed by you on the cash journal is how much?

[fol. 1039] A. \$1171.43.

Q. And which way does that go? Was more carried into the return or less?

A. More was carried into the return in that year.

Q. That is to say, the \$1100 more was carried into the income tax return than your analysis of the cash journal showed?

A. That is correct.

Q. Now, have you made the same kind of a comparison for the year of 1947?

A. I have.

Q. Give us the figures on that, please?

A. In the year of 1947 the gross receipts per the work sheet was \$73,084.09. In that particular year the accommodation items shown were \$2079.25. There was an item also in that year shown of loans repair \$5380.93. Also in that year there was an item shown on the work sheet of \$1000 which was listed as an error, so that the total deductions in that year were \$8460.18, and the amount carried into the income tax return was \$64,623.91.

Q. Now, how about the cash journal?

A. The cash journal showed total receipts of \$73,194.36 less accommodation items of \$2494.27, which would have left taxable income, gross, of \$70,699.59.

Q. And, you have referred to the loans repaid item on the work sheet of \$5380.93. Is that the amount of that?

A. That's correct.

[fol. 1040] Q. Now, when the income tax return was prepared that was deducted, wasn't it?

A. That was deducted from the total receipts for that year.

Q. The gross receipts were shown on the work sheet, were they not, the \$73,084.09?

A. That is correct.

Q. And the deduction, loans repaid, is also written on the work sheet and deducted?

A. That is correct.

Q. Did you make any investigation of that?

A. I did not.

Q. Do you know whether that was or was not properly deductible in the year?

Col. Windom: I object. He said he didn't investigate it.

Mr. Sillman: I am not talking about his investigation now. I am talking about if it is a proper deduction.

The Court: He may answer if he knows.

Q. Do you know whether or not that was a proper deduction in the year of '47?

Col. Windom: I object because he has no basis for his answer.

The Court: If he knows he may answer.

Col. Windom: Isn't the proper question as to whether he can express an opinion on it, find out whether—

Mr. Sillman: I am only asking him if he knows. If he doesn't know he will probably say so.

[fol. 1041] The Court: You may answer, first, whether or not you know. Do you or do you not know?

The Witness: No, I do not know.

Q. Under what circumstances would it be a proper deduction, speaking taxwise, for the year of 1947?

Col. Windom: I object.

Mr. Sillman: We have a right to explain that, why he doesn't know whether it is a proper deduction.

The Court: He may answer if he knows.

A. Whether or not it would be a proper deduction would depend on prior transactions. If there had been loans made to the business in that year—

Q. In the year of?

A. In the year of 1947.—which were repaid during that year, and if the loans which were made were carried into the income, I mean into this total figure of \$73,000, then the \$5380.93 would be a proper deduction. If the amount was not loaned in that year, or if it was not carried into income, then it would not be a proper deduction.

Q. In other words, if the money was loaned in the prior year, in a prior year—

A. It would not be a proper deduction in the year of '47.

Q. And, it would be a proper deduction in what year?

A. Should have been deducted in the year in which it was paid.

Q. Is this correct, Mr. Forsythe, that the deduction itself is proper but the question is whether it is proper in one [fol. 1042] year or other? Is that what the point is about?

Col. Windom: I object.

The Court: Yes. Sustained.

Q. So, whether the item was properly deducted or erroneously deducted would depend upon the year in which the loans were made and carried into the business income?

A. That is correct.

Q. Now, there has been testimony, Mr. Forsythe, by both Mr. Friedberg and by Mr. Henry Weiss, that the \$5380.93 loans repaid item represented advances made in prior years and not in the year of '47. Now, if you assume that to be a fact, was the deduction proper or erroneous in the year of 1947?

A. It would be erroneous in the year 1947.

Q. Now, on the basis of your experience as an accountant, if you were handed a work sheet such as the one you have before you, what would be your practice—do you have the work sheet before you?

A. No.

Q. You are familiar with it, aren't you?

A. Yes, sir.

Q. Do you now have before you the 1947 work sheet?

A. I do.

Q. And the one to which you have just been testifying?

A. That is correct.

Q. About which you have been testifying?

A. Yes.

[fol. 1043] Q. What would your practice have been as an accountant, an experienced accountant, Mr. Forsythe, if such a work sheet were handed to you?

Col. Windom: I object, if the Court please. I think that he may answer what the practice would be, how it would have been handled and how it should have been handled.

The Court: Are they not concerned with what action took place in this instance?

Mr. Sillman: We are concerned with whether it was an innocent error.

Col. Windom: That would be using this witness to fortify Mr. Weiss.

The Court: This witness did not make up the return and

this work sheet. He may tell what he might have done. He is an expert.

Q. As an expert do you have an opinion on what you would have done if such a work sheet were handed to you?

A. Well, as to this item of loans repaid, which was deducted from the total gross receipts as shown on the work sheet, I would make some investigation before I would make up a return showing that as a deduction. In other words, I would want to determine the facts behind it, when it was paid in, whether it was actually repaid, and all the facts behind it before I would take it as a deduction in that particular year.

Q. Do you have an opinion as an expert on whether, on the basis of that work sheet, you would have just assumed that the loans were advanced in the year of '47?

[fol. 1044] Col. Windom: I object.

The Court: The witness has certainly answered as to what he would have done under the circumstances. He says he would have investigated.

Q. In your investigation would you have asked any questions of the taxpayer?

Col. Windom: I object.

The Court: Sustained.

Q. Have you added back, in your investigation, the item which was erroneously deducted to give us a comparison?

Col. Windom: I object to that question, the use of the word erroneous.

The Court: Sustained.

Q. Have you adjusted the figures which appear on the work sheet, on the assumption which I give you that the loans repaid was erroneously deducted?

A. I had not, on here.

Q. Well, of course, if that were taken into consideration what would the comparison be? You can give us round figures. It isn't important.

A. If that were taken into consideration the difference between the work sheet and my figure would be approximately \$600.

Q. Did you make any analysis of the retail sales recorded in the retail order book?

A. I did.

Q. Did you make a comparison between the retail sales [fol. 1045] that were there recorded in detail and the retail sales that were recorded in detail in the cash journals for the four years, '44, '45, '46 and '47?

A. I made that only for the years 1945, 1946 and 1947.

Q. And how was that comparison?

A. They were substantially correct. There were a few items which could not be checked out entirely, but they were very minor in amount.

Q. In the course of your audit what was the reason for not making the comparison with the year of '44?

A. I don't believe that we were requested to make an examination in '44 covering those items.

Q. You didn't cover that for that year?

A. I did not.

Q. And, you are only testifying to the years you did cover?

A. '45, '46 and '47.

Q. Did you make an analysis of the wholesale sales that were recorded in the wholesale invoices that you have identified, and did you make any comparison with the wholesale sales recorded in the cash journals?

A. I did.

Q. Tell us what that analysis was?

A. Those were substantially all accounted for in the cash book. As I say, there were a few items which could not be traced through entirely and I was unable to tell exactly whether every item actually was recorded, although the difference was very small.

Q. On the basis of your experience as an expert, a certified public accountant, do you have any opinion on whether [fol. 1046] these errors or items that you couldn't trace through were ordinary or whether they *were* extraordinary, or what? Do you have any opinion on that?

A. I would say they were ordinary.

Q. How does it compare with your general experience when you make a detailed audit of books?

A. I would say that the particular relationship there was

about average. There are some companies which keep very detailed records and account for every penny. On the other hand, there are some that don't, that account for a lot less than was accounted for here in a strict manner.

Q. Would you attribute anything unusual to these little discrepancies as you went through the books?

A. No, sir.

Q. They weren't perfect, that's for sure?

A. That's right.

Q. Now, Mr. Forsythe, did you in the course of your analysis and investigation make any effort to reconstruct income to determine if the miscellaneous income from ready made stock suit sales in '45, '46 and '47 found their way into the cash journal and into the income tax return?

A. I did.

Q. And, did you prepare the figures for the summaries to which you will testify?

A. I did.

Q. Why were only the years '45, '46 and '47 included? Why was '44 omitted?

A. In the first place, we had no wholesale invoices for the [fol. 1047] year 1944 so that we could not make a complete check of the items which were specifically sold and listed in that year.

Q. You were unable to find the '44 invoices?

A. Wholesale.

Q. So, without those you couldn't make a comparison for '44?

A. That's right. There was also the fact that in '44 there were none of the Friedberg Loan or D. Friedberg items shown in the cash receipts book.

Q. At any rate, you would have had to have had available the wholesale invoices for '44 to have made the same kind of analysis for that year?

A. That is correct.

Q. Now, you had wholesale invoices for '45, '46 and '47 and those are the years that you analyzed?

A. That is correct.

Q. So my questions to you, Mr. Forsythe, will be limited now to your analysis of the years for which you actually made the analysis: '45, '46 and '47. Please tell the jury

the general procedure that you followed to reconstruct income and what your objectives were, what you were attempting to determine.

A. The procedure which in general was follows there was to take the retail order books for the years 1945, 1946 and 1947 and the wholesale invoices for the years 1945, '46 and '47, to analyze those completely as to the type of garments that were sold and the number that were sold, which were specifically recorded. From that we computed the amount of garments which were available for sale, making adjustments for some items which had been ordered in 1944 which were not delivered until '45, and for some items [fol. 1048] which had been ordered in 1947 which were not delivered until 1948; to make adjustments for those, to make adjustments for inventory at the end of 1947, and from those amounts to compute the number of garments which would have been available to sell as ready make stock suits. The objective, the reason for doing that was to attempt to determine whether or not the amounts recorded in the cash book under the items of D. Friedberg or Friedberg Loans and which were carried into income, actually covered the amounts of such sales.

Q. Now, as to the amounts recorded under the heading D. Friedberg or D. Friedberg Loan, were those amounts carried into the gross income in the income tax work sheets?

A. They were.

Q. That's for the three years in which they appear, '45, '46 and '47?

A. That is correct.

Q. I have been referring to that as miscellaneous income. How do you refer to it? Is that a correct name: miscellaneous income?

A. It would be miscellaneous income. As I understand, these items also included other items of miscellaneous income in addition to the sales of stock suits.

Q. Included all miscellaneous income other than that listed in detail, did it not?

A. Included all income other than that listed in detail, yes.

Q. You say they did find their way into the gross income reported on the income tax work sheet?

A. The amounts which were recorded in the cash books [fol. 1049] as either D. Friedberg or D. Friedberg Loans were reported as income.

Q. Now, in the course of this reconstruction of income did you make any analysis of payments that were made to finishing shops from cancelled checks?

A. I did.

Q. And, how did they correspond with the deductions that were taken on the income tax returns?

A. They were substantially correct. In 1945 and '46 the amounts were different, but I couldn't determine—the amounts which were shown for labor for finishing were different, but I could not determine the reason for that except that according to his analysis and ours there were items switched back and forth from labor and woollens, purchases, and some other slight differences. However, we did make a complete analysis of the payments from the checks.

Q. What was the general comparison? Did you find any gross discrepancies?

A. The total deductions in the return? No.

Q. Were the total deductions in the returns correct or incorrect?

A. They were substantially correct.

Q. Did you make any analysis of the type of miscellaneous income from cleaning, pressing, alterations and repairs that were in the cash journal prior to 1945?

A. I did.

Q. That's for the year 1944 or any prior years for that matter?

A. Yes.

[fol. 1050] Q. And, what was the purpose of making that analysis?

A. It was to help in arriving at a reasonable estimate of the amount of such income which he might have expected from cleaning, pressing, alterations in the year 1945, '46 and '47.

Q. Was there also any purpose to determine whether that income was large or insignificant or what?

A. Yes, as to the amount of the income from that source.

Q. And, did you make any analysis of the invoices which were available showing payments to wholesale cleaners?

A. That is correct, I did.

Q. Now, I take it from your examination, that the cleaning and pressing was done by wholesale companies, and there were some invoices that you just spoke about?

A. That is correct.

Q. And, no indication that any of that work was done in the shop itself?

A. So far as I could determine, no.

Q. Now, on the basis of those invoices to the wholesale cleaners, you say you did analyze those?

A. I did.

Q. Can you, on the basis of your analysis and investigation, give us an estimate of the amount of income from the miscellaneous sources that I have referred to, in the years of '45 and '46?

A. '45 and '46? I would say that the income from those sources probably did not exceed a thousand dollars.

[fol. 1051] Q. And, in the year of 1947?

Col. Windom: Is he speaking of gross or net?

Q. Are you speaking of gross income?

A. Gross income from the sources of cleaning, pressing, alterations and things of that—

Q. You are not speaking of profit or net income?

A. Oh, no.

Q. Give us some idea, please, how you made that analysis and how you came to that conclusion?

A. In examining the cash receipts records for the prior years, the total amount of income from that source in 1942 was \$889.90.

Q. Now, that's gross income?

A. That is gross, that is the gross amount recorded in the cash receipts journal for the year 1942.

Q. Go ahead.

A. For the year 1943 the gross amount of income from such source was \$2161.90, and for the year 1944 the gross amount was \$1189.88. In 1945 the total amount which was paid to the cleaner, that is, the wholesale cleaner—

Q. Paid by whom?

A. By the company.

Q. Paid by Mr. Friedberg?

A. By Mr. Friedberg.

Q. To wholesale cleaners?

A. That is correct.

[fol. 1052] Q. How much was that?

A. \$163.46.

Q. And, for the year 1946 the amount was——

A. \$64.53.

Q. For the entire year?

A. That is correct.

Q. That would indicate considerable falling off of that business, would it not?

Col. Windom: I object to the question.

The Court: Sustained.

A. For the year 1947 I found no invoices to wholesale cleaners at all.

Q. Go ahead.

A. Mr. Friedberg had indicated that no such items—their markup was approximately 85 per cent.

Q. Just explain what that means.

A. That would mean, for instance, if the wholesale cleaner charged 25 cents for cleaning, or somewhere in that neighborhood, for cleaning a suit, cleaning and pressing, that they would get probably 45 cents from their customer.

Q. You call it 85 cent markup?

A. 85 per cent markup on cleaning and pressing.

Q. Before you go on, have you had any experience with other dealer cleaners? Do you have any opinion on the amount of that markup?

[fol. 1053] A. No, I don't.

Col. Windom: Object.

Q. Go ahead.

A. Using those markup bases, the income from cleaning, pressing and alterations for 1945 would amount to approximately \$302, and for the year 1946, to approximately \$119. As to the year 1947, I found no invoices, so that I couldn't make a statement as to that year.

Q. What was the basis for the additional income that went into your estimate of approximately a thousand dollars?

A. There were other items of—selling items of some caps and shirts and some military designs of some sort.

Q. Insignias?

A. Insignias, I believe they are called.

Q. Did you examine the invoices on those?

A. I did.

Q. Tell us, was that a big, extensive business, or what was it?

A. No, the invoices were negligible in amount. I do not have the amount here. It seems that they ran two or three hundred a year, something like that.

Q. Two or three hundred a year?

A. For invoices.

Q. Now, was there any other sources of miscellaneous income that you include in this thousand dollars? You have about \$302 for one year cleaning and pressing, and \$119 the next year, and then you have given this other item. Are there any other items?

[fol. 1054] A. I know of no other type of income to be had there except it would be repairs, maybe some off-the-street repairs, maybe some one *would* come in and want a button sewed on, or something like that.

Q. For the year of '45 you have taken about \$302 in cleaning and pressing and for the year of '46, \$119, gross in each year?

A. That is right.

Q. You say you were unable to find any invoices for the year of '47?

A. That is correct.

Q. In your opinion and based upon your examination of the invoices available, based on your examination of prior records for comparison purposes, what is your opinion as to whether the figure of \$1000 would be approximately correct for gross miscellaneous income from these various sources, excluding, of course, the ready made sales?

A. I would say that based on my investigation there that it probably would cover all of the miscellaneous items in those years.

(A brief recess was taken.)

By Mr. Sillman:

Q. Mr. Forsythe, did you make an analysis of the retail made to measure order book sales?

A. I did.

Q. And the wholesale invoice sales. I am talking about this reconstruction for the years of '45, '46 and '47. Were the retail made to measure order book sales part of the ready made stock sales, or were they separate things?

A. They were separate.

[fol. 1055] Q. Now, Mr. Forsythe, will you please tell me or give me the analyses that you made so that I may first mark them for identification. Give them to me in the order in which you expect to testify from.

Mr. Sillman: Mark these for identification.

(Defendant's Exhibits 23, 24 and 25 were marked for identification.)

Q. Now, just so that I can and Col. Windom can identify the order of these, Exhibit 23, just give me the top caption.

A. Computation of number of garments.

Q. And, Exhibit No. 24, is that a computation of income?

A. That is correct.

Q. And then, of course, Exhibit 25 is a summary of reconstruction of income, is that correct?

A. That is correct.

Q. Mr. Forsythe, will you proceed and tell the jury what your reconstruction of income indicated, what figures you arrived at, and explain in detail these various items that appear on the exhibits, and in each instance when you testify from an exhibit will you please identify it to us so we will know what you are talking about?

A. In Exhibit 23, which is the computation of number of garments—

Q. We can't hear you.

A. Exhibit 23, which is the computation of number of garments available in ready made retail sales for the years 1945, 1946 and 1947, the number of garments produced in those years, including coats and pants—in the year 1945 was 832 coats and 1178 pants; in the year 1946 it was 1640 [fol. 1056] coats and 2134 pants; in the year 1947 it was

1536 coats and 1872 pants. Total garments of each class was, coats 4008; pants 5184.

The number of garments sold in those years which were specifically recorded was, for the year 1945, coats 499, pants 920; the year 1946, coats 874, pants 1286; the year 1947, coats 947, pants 1405. The total amounts which were listed in detail were, coats 2320, pants 3611.

To that we added garments which had been ordered by a customer in 1944 but which were not delivered until 1945. Those were, coats 30, pants 51. From that we deducted the amounts which had been ordered in 1947 but were not delivered until 1948. The amounts of those were, coats 14, pants 37.

The net sales of garments listed in detail would be, coats 2336, and pants 3625. That would leave the amount of the stock garments to be accounted for of coats 1672, and pants 1559. From that we deducted an inventory of stock suits on hand at December 31, 1947 of 150 coats and 150 pants. So that the sales of garments which were not listed in detail, or the sales of ready made stock garments, would have been, coats 1522, and pants 1409.

Q. Now, Mr. Forsythe, I appreciate the fact that it is very difficult and humanly impossible for us to just follow all of those figures without any meaning, and I am going to ask you some questions about Exhibit 23 which is captioned Computation of Number of Garments, Available in Ready Made Retail Sales for the Years 1945, 1946, 1947. What was the object of this computation? What were you seeking to determine?

A. Seeking to determine how many garments had not [fol. 1057] been accounted for in items which were specifically recorded, either as retail made to measure sales during those years, or the ones which were listed as wholesale sales to other dealers during those years.

Q. Well, putting it a different way, is this what you are trying to tell me, that you were seeking to determine the garments that were available or left after you took into account, I should say, the garments which were involved in wholesale transactions or which were listed in detail?

A. That is correct.

Q. Is that the same thing?

A. Yes, that would be the same thing.

Q. Now, then, let's see what we start with. What is the first thing we start with? You needn't repeat the figures. Just get the picture of the thing. You first start with what?

A. The number of garments produced during those years by the finishing shops.

Q. You start out with the total number of all garments produced, is that correct?

A. That's correct.

Q. Now, when you start out with the total number of all garments, does it include the garments involved in wholesale sales and in made to measure sales and in ready made sales?

A. That is correct.

Q. In other words, that's all that were produced, is that correct?

A. That is correct; of coats and pants.

Q. I am talking in terms of garments. Mr. Forsythe, may [fol. 1058] I explain to you that we are going to ask the introduction of these figures, but I would like to get the summary picture of what you have got down here in figures and what your objective was. We start out, first, then, with all garments of every kind and description produced: wholesale, made to measure, ready made?

A. Right.

Q. Now, then, did you then determine the number of garments that are involved in whole transactions, recorded in detail, and in made to measure sales that are recorded in detail?

A. I did. I analyzed every item that was specifically recorded.

Q. Now, if you analyzed every item that was specifically recorded, if you deducted all of those which were listed and recorded in detail from the total amount produced, what would be left?

A. The amount which was produced less the amount which was recorded, or those which would have been available for sale as stock garments.

Q. Could there be anything else available?

A. I don't believe so, no.

Q. Well, if you took everything that was produced and everything that was recorded in detail and subtracted everything that was recorded in detail, what was left is everything that was available?

Col. Windom: I object to the leading, again.

- The Court: Sustained.

Q. Now, the purpose, then, of this computation which you have gone into detail and which has the detailed figures, I believe you have testified, was to determine how many garments were available for sale other than those [fol. 1059] which were specifically recorded in detail, wholesale or retail, but recorded in detail?

A. That is true.

Q. Now, then, turn to your next exhibit. Is that 24?

A. 24.

Q. You have determined the number of garments that were available. What is Exhibit 24? What computation did you make there?

A. That is computation of income from ready made retail sales for the years 1945, 1946 and 1947.

Q. What did you do, then, just before you get into the detail figures? When you determined after deducting all of the garments listed in detail, or transactions in detail, from all that were produced, and determined all that were available, what did you *do* with the garments that were available? What was your next step in this reconstruction? Just give it to me generally before you get into the figures.

A. It was to convert the number of coats and pants which were available into suits.

Q. And into suits, and into dollars?

A. Well, later into dollars, but the number of garments was first converted into a certain number of suits and then from that into a certain number of dollars.

Q. Now, explain Exhibit 24 to us.

A. On Exhibit 24, carrying over the same figures that were at the bottom of that: 1522 coats and 1409 pants. Then, by matching the coats and pants you would have available 1409 suits plus 113 extra coats.

[fol. 1060] Now, in taking care of the 113 extra coats,

during these years Mr. Friedberg had had sales of overcoats and sport coats. I had to assume that the 113 might have included sales of both types. In order to get a figure which might be reasonable there, I analyzed the sales for those years to determine the number of overcoats and the number of sport coats that he actually sold during those years, during the years '45, '46 and '47, and using the same percentage of overcoats and sport coats sold during those years, the 113 extra coats here would result in figures of overcoats 80 and sport coats 33. That makes the total of 113 extra coats.

Now, in converting that to dollars, we had 1409 suits to which we applied a price of \$33.

Col. Windom: I object and move that that portion be stricken.

Mr. Sillman: If the Court please, the foundation has been offered in evidence here. What is the objection for?

Col. Windom: My objection is based on this, that Mr. Friedberg has testified there was no fixed price for any of these ready made garments, that he sold for whatever he could get for them. Now they are attempting to rationalize this by fixing a specific figure.

Mr. Sillman: And he also testified that the average price was \$32-\$33.

Col. Windom: He testified that ready-made wasn't anything less than \$55.

The Court: Read the question.

(The last question was read.)

Col. Windom: My objection is that we are getting into an [fol. 1061] arbitrary computation.

Mr. Sillman: A man who is in business ought to know what he sells his garments for. Now, Your Honor was satisfied at the time he offered evidence of the price of retail garments. We even brought in sales tags and sales display signs, which, of course, Your Honor ruled out because it was purely cumulative, and I say that Your Honor was entirely right. I am just refreshing your recollection that the evidence here, the testimony of the witness, once having been given as to what he sold his garments for, that's what he sold them for.

The Court: Upon what basis does this witness fix an arbitrary value of \$33?

Mr. Sillman: This witness has absolutely no knowledge, nor do we claim he has. He is an expert witness called here as an expert witness, as an accountant, and he necessarily takes the prices which the defendant gives him and which the evidence has established.

The Court: The evidence has certainly not established an arbitrary \$33 value on these suits.

Mr. Sillman: Your Honor, the defendant testified that his average price for these garments was \$32-33. This witness is taking the high figure, which is unfavorable to the defendant.

The Court: The Court will reserve a ruling on the admissibility of this evidence. He may answer.

Q. Proceed, Mr. Forsythe.

A. That was in regard to converting the suits into a certain amount of dollars. We had the 1409 suits to which we applied a price of \$33.

[fol. 1062] The Court: Upon what basis did you apply that price?

The Witness: Statement of Mr. Friedberg.

The Court: That was Mr. Friedberg's statement?

The Witness: To me, yes.

The Court: Were there other records available upon which you could establish the average price?

The Witness: There were none available on which I could establish a price.

The Court: Did you have any other information other than what Mr. Friedberg told you, upon which to base the statement you have just made?

The Witness: No, sir.

The Court: Go ahead.

The Witness: The 1409 suits at the \$33 figure would equal \$46,497. The 80 overcoats, which Mr. Friedberg said he was selling at the same prices as suits——

Col. Windom: I object to that. I object on the ground that there has been no testimony as to the price of overcoats.

Mr. Sillman: Now, if the Court please——

The Court: He may answer under the same ruling the Court has made to the previous question.

The Witness: The 80 overcoats at a price of \$33 would produce \$2640. The 33 sport coats at a price of \$23——

Col. Windom: I have the same objection to that.

The Court: The same ruling.

[fol. 1063] The Witness: ——would produce \$759, or a total income, from sale of garments which were not listed in detail, of \$49,896.

The garments were converted into units of suits, and in doing that we were attempting to arrive at one figure or a unit which could be used for one figure. The 1409 suits, of course, at \$33, and using here sales value, would amount to 1409 suits; 80 overcoats at \$33, since they were the same price as suits, would amount to the same selling price as 80 suits; and 33 sport coats at \$23 would be equal to 23 suits at \$33.

So that we would arrive, then, at a—in converting to a single unit of suits of 1512 suits or units, the total number of units which were available and sold was 1512, and as computed above, produced \$49,896.

Q. Now, Mr. Forsythe,——

Col. Windom: I object to the latter testimony, on the garments converted into suits, and move to strike it because it is on its face a most arbitrary thing. Mr. Forsythe, if I understand correctly, in his first item comes out with pants and coats, which he was unable to account for in Exhibit 23, and now we are engaged in converting suits and pants into overcoats and sport coats. I move to strike the testimony.

The Court: Do you desire to cross examine him on this testimony at this time?

Col. Windom: Is Your Honor letting this in under reserved ruling?

[fol. 1064] The Court: The Court will afford you the opportunity of cross examination.

Col. Windom: I would prefer to cross examine him at the proper time, if Your Honor reserves a ruling.

By Mr. Sillman:

Q. Now, Mr. Forsythe, Exhibit 25, the summary of reconstruction. You have given us some detail as to how you arrived at the figures. Please explain the summary of your reconstruction of income.

A. Summary of reconstruction of income for the years 1945, 1946 and 1947.

The total number of garments which were produced by all of the finishing shops during these three years was, coats 4008, pants 5184.

The total number of garments used in wholesale sales and into made to measure sales were 2336 coats and 3625 pants.

The total number of garments which would be left and available for ready made sales were, coats 1672, pants 1559.

From that we deducted the December 31, 1947 inventory of 150 garments each of coats and pants, leaving balances of, coats 1522, pants 1409.

In Exhibit 24 we had converted the balance there into 1512 ready made suit sales which produced \$49,896. The estimated income from miscellaneous sources was \$3000, making a total amount—

Q. Pardon me. When you said the estimated income from miscellaneous sources, did you mean miscellaneous sources or all other miscellaneous sources?

[fol. 1065] A. All other miscellaneous sources. What I meant there was the cleaning, pressing, alterations and so forth.

Q. Go ahead.

A. The total amount of miscellaneous income would be \$52,896. The total amount of miscellaneous income recorded in the cash receipts book as D. Friedberg Loan items was \$53,405. The total wholesale and made to measure sales in the three years of '45, '46 and '47 was \$110,863. There was a total of receipts recorded in the cash receipts journal for which there was no corresponding items in the order books, either the retail or the wholesale, amounting to \$2033. The total ready made sales as computed above was \$49,896. All other miscellaneous income

amounted to \$3000, making total income as reconstructed \$165,729.

Q. Now, I want to ask you——

The Court: Just a moment, before you ask another question. What was the basis of your information for this summarization which you have just given?

The Witness: Exhibits.

The Court: What exhibits?

The Witness: Exhibits 23 and 24.

The Court: What was the basis for those exhibits? Is the information upon which you base those exhibits taken from the records and books, or is it based upon what Mr. Friedberg told you?

The Witness: In Exhibit 23, referring to garments produced, that was computed by analyzing the cash disbursements, the cancelled checks. I determined the amount which was paid to the finishing shops during [fol. 1066] those years.

The Court: In other words, that information was gained from an examination of the records?

The Witness: That part was. To arrive at the total number, the number which I had was arrived at by taking those total amounts which were paid to the finishing shops, which made his garments, and dividing those amounts by the average price which Mr. Friedberg said he paid for finishing garments during those years.

The Court: Was there any information of any kind or character available upon which you based an arbitrary price for the garments which you have described as having been sold or worth a certain price other than what Mr. Friedberg told you?

The Witness: You mean, as to the \$33 item? No.

The Court: A——

The Witness: No.

The Court: Is that true of the various exhibits which you hold in your hand, specifically the summarization?

The Witness: As to the summarization, the items which Mr. Friedberg would have given the information on would have been the average price which he paid for garments being produced for him, his average sales price during

those years, and the number of garments which he had on hand at the end of 1947.

The Court: In other words, your basis of the summary was based upon what he told you as to those particular items?

The Witness: As to those particular items.

[fol. 1067] The Court: You have no records available upon which you could formulate—

The Witness: I have no records available upon which to formulate a definite amount.

The Court: You may proceed.

By Mr. Sillman:

Q. Now, the last figure that you have here in this reconstruction is \$165,792, is that correct?

A. That is correct.

Q. And, does that represent gross income?

A. Gross income.

Q. And, for the three years, '45, '46 and '47?

A. That is correct.

Q. Now, how does that figure compare with the gross income reported on the income tax returns, after making adjustment, of course, for the '47 loans repaid? What is the amount of that, the total income which was reported for those three years?

A. The total income which was reported for those three years was \$166,258.85.

Q. That is to say, the total income reported after adjustment for the loans repaid is just \$466.85 more than the total amount of income reconstructed by your method?

A. I don't have the exact figure. It would be in that neighborhood.

Q. It is a simple deduction. Four hundred some dollars; right?

A. It would be four hundred and some dollars, sir.

[fol. 1068] Q. Can you make just a brief mental—

A. Four hundred and some dollars.

Col. Windom: The Government objects and moves to strike the testimony with relation to Exhibit 25, on the ground that it purports to be an accounting summary based upon the books and records of the defendant, when

Your Honor has shown by examination of the witness that it is not actually based upon the books and records of the witness, but takes into—that is, in arriving at it, Mr. Forsythe has used what Mr. Friedberg told him to be averages, and that type of thing. Therefore, in purporting to be an account based upon books and records as such, it is not.

The Court: Had you completed your examination of these various exhibits?

Mr. Sillman: As to these exhibits, I had. I had just a few more questions.

The Court: I assume you intend to offer these exhibits?

Mr. Sillman: Yes. I was merely suggesting, Your Honor, that I was now going to question him on some other matters not related to these exhibits.

The Court: The Court will hear you on Col. Windom's motion to strike at the proper time, but if you want to proceed as indicated, you may do so.

Mr. Sillman: On other matters and this will be held in abeyance?

By Mr. Sillman:

[fol. 1069] Q. Now, Mr. Forsythe, I want to make a comparison between some figures that you gave and some figures that Mr. Clager gave. Would you please go back to '45. Mr. Clager didn't give me any figures for '44. I don't think I asked him, nor did they ask him.

Col. Windom: I object to that statement.

Mr. Sillman: Well, I don't have them.

Col. Windom: They are in Exhibit 2. Government's Exhibit 2 was testified to in every single detail and the figures for '44 are in it in detail.

The Court: Now, gentlemen, we don't care what each of you think individually. We want to know what the record shows. If it is in the record, it is all right. Proceed with the examination.

Mr. Sillman: May I say to Your Honor, Exhibit 2 is a net worth statement. It does not have any of these figures at all.

The Court: Go ahead with your examination.

Q. Go back to your figures for 1945, if you please.

A. In relation to what?

Q. In the comparisons you made between the cash journal figures and the work sheets, income tax work sheets. I just want you to get to that point and then I will proceed with the question. You testified, Mr. Forsythe, that your analysis of the 1945 cash journal showed gross income of \$39,987.17. Is that correct?

A. That was the gross receipts.

Q. That's what I meant to say. And, then, adjusted by deducting the accommodation items of \$1993.11, is that right?

[fol. 1070] A. That is correct.

Q. You said your analysis of the cash journals showed gross receipts of \$37,994.06?

A. That is correct.

Q. Now, Mr. Clager gave me the following figure of gross receipts which he said he took from the cash journal—oh, no, pardon me, I withdraw that. I am wrong about where he took it from.

Mr. Clager gave me gross receipts which he said he took from the order book and wholesale invoice records, or \$25,165.29. Was the gross income—and I will use round figures—\$25,000 or was it \$37,000?

Col. Williams: I object.

The Court: Let him tell what it was, if he knows. Objection sustained.

Q. What was the gross income?

A. Gross income was \$37,994.06.

Q. Then, Mr. Clager, after some cross examination, gave me a figure of \$9175, representing the Friedberg items in the cash journal, which totaled to the previous he gave me was \$34,340. Was that figure the gross income?

A. I would say from my examination that it would not be.

Q. Now, when you made your examination did you use an adding machine or not?

A. Yes, sir.

Q. And, when you went to the cash journal to determine the total figure, did you determine it by using an adding machine?

[fol. 1071] A. Yes, sir.

Q. Did you run a tape?

A. Surely.

Q. Can you give us any explanation of the discrepancy between your adding machine figure of \$37,900 and the ultimate figure which Mr. Clager gave me of \$34,300?

A. Well, if I get the situation right as to what was determined, if you would take the sales or a record of the retail made to measure sales which were specifically recorded, and the wholesale sales——

Q. That's what he did.

A. ——for those years, those would not necessarily correspond with the cash book because of the fact that in many instances there were suits which were ordered in one year which were not paid for until the following year, so that there would be a discrepancy between the income as determined by using those records and by the income taken from the cash book itself.

Q. And, why would there be a discrepancy?

A. Because of the carry over of orders which might be recorded in one year which were not delivered and paid for until another year, the following year.

Q. In other words, do I understand this, that if you go to the sales records and add up the sales that appear in the sales record, you do or do not get an accurate figure of the sales?

A. Let's say you would not get an accurate figure of income.

Q. That's what we are interested in this case. Why [fol. 1072] wouldn't you get an accurate figure of income?

A. Because of the fact that the orders which were taken and recorded in one year might not be actually delivered and paid for and be coming in as cash into the cash book or cash journal until the following year.

Q. Now, Mr. Forsythe, as an expert, as a certified public accountant, do you have any opinion as to whether any other person engaged in any accounting work with any kind of accounting experience would know that?

Col. Windom: I object.

The Court: Yes. You are not testing out the ability of accountants. Sustained.

Q. Now, the difference between your figures, because Mr. Clager went to the sales records, is about \$3000, isn't it?

A. Based on the figures which you gave me, yes.

Q. Round figures. You give the figures. It is too difficult to spell it out. About \$3000?

A. Approximately.

Q. Now, as an expert, as a certified public accountant, if you were interested in actually determining a man's income, would you run a tape or adding machine on the cash journal, cash receipts journal, or would you go back to those sales invoices to determine his income?

A. In a situation such as this I would use the cash receipts since he was using a cash basis.

Q. Now, if you wanted to create a discrepancy in figures, where would you go?

Col. Windom: I object to that question.
[fol. 1073] The Court: Yes.

Col. Windom: I don't appreciate the sarcasm.

Q. All right, let's take the next year. In the year of 1946 you gave me a figure in the cash journal of gross income: \$60,958.53, correct?

A. Gross receipts, yes.

Q. And, the adjustment for accommodation items that year was \$3347.60; correct?

A. Correct.

Q. And, that left gross receipts of \$57,610.93?

A. Correct.

Q. I will call it \$57,600. In that year Mr. Clager added up the sales records that we have referred to instead of the cash journal, and he said he got a figure of \$36,344. Now, using the round figures, tell me whether the gross income was \$36,000 or whether it was \$57,000?

A. I would say it was \$57,000.

Q. In other words, does your same answer apply to this year as it did to the prior year?

A. That's correct.

Q. That is, if you go to the sales records you don't get the gross income, do you?

Col. Windom: I object.

The Court: Sustained.

Q. Now, let's take the difference in the year of '47. You gave me a figure there, Mr. Forsythe, from the cash journal—pardon me a moment. In the year of '46 did you also use an adding machine to add up the income [fol. 1074] from the cash journal?

A. Yes.

Q. And, in the year of '47 did you do the same?

A. Yes.

Q. You gave me a figure for the year of '47 of \$73,194.06, accommodation items \$2494, leaving gross income of \$70,699. I will call it \$70,600. Is that correct?

A. Yes, sir.

Q. Now, Mr. Clager gave figures here from the sales records of \$45,519.46. Which correctly states the gross income: the \$45,000 or \$70,000 figure?

A. I would say the \$70,000 figure was the gross income.

Q. Any question about it?

A. I don't believe so.

Col. Windom: Object.

The Court: Sustained. That may be a question for the jury to determine.

Q. When you totaled up the——

The Court: Now, your two or three questions have been very extended. The Court intends to hear you on the legal question.

Mr. Sillman: Just one more question.

Q. When you added up the income on the cash journal, did you include as income the miscellaneous income items entered under the name of Friedberg or Friedberg Loans?

A. Yes, sir.

[fol. 1075] Mr. Sillman: That is all.

The Court: Ladies and gentlemen of the jury, the Court is not adjourning. You may leave now and return at two o'clock. You must follow the instructions heretofore given you. You may go at this time.

(The jury leaves the court room.)

The Court: The Court will hear counsel for the Government on the motion to strike.

Mr. Sillman: In order to complete the record, I suppose I ought to offer the exhibits.

(Exhibits 23, 24, 25 were offered in evidence.)

The Court: You may do so. They have been identified and properly marked?

Mr. Sillman: Yes, sir, they have.

COLLOQUY BETWEEN COURT AND COUNCIL

Col. Windom: I think the primary objection to these exhibits goes, as I have already stated in the presence of the jury, to the fact that Mr. Forsythe has, as he says, of necessity used a strictly arbitrary figure which was furnished by the defendant and which I personally, and I say personally, underscored, have no recollection of ever having been used in this trial. I did bring out from the defendant, as I recall, that he was selling these ready made suits very, very cheaply, but that he never at any time affixed a price tag on them, so that no other human could ever know what they were sold for.

I brought out, to use my phrase, that he charged for those whatever the traffic would bear. Now, if that is so and he kept no record of those as such, how [fol. 1076] can Mr. Friedberg, Mr. Forsythe, or any other man, determine what the average of those was. Further, on Exhibit 23 Mr. Forsythe ends up with a surplusage of 1522 coats and 1049 pants. I take it that the word coats was all that was ever used, is that right, Mr. Forsythe?

The Witness: Yes.

Col. Windom: There was no other description on it. Now, he attempts to rationalize those by converting those coats into overcoats and sport coats at which no price was ever fixed at any time in the testimony of this case. Consequently, these exhibits are not based upon testimony in the record in the case.

That same matter, of course, carries through into Exhibit 25, where he carried his summaries from Exhibits 23 and 24 into 25, and the whole basis here is something which Mr. Friedberg has stated to him but which he has not stated to the jury in this case.

Now, an additional objection. Mr. Forsythe's exhibits

purport to be an audit of books and records. Shall I say, they purport to be an audit of books and records which are sufficient in themselves, and yet they are obviously insufficient because Mr. Friedberg has had to supply the information to account for \$49,896 of income which doesn't appear on those books. No breakdown appears.

Actually, then, Mr. Forsythe is engaged in making, in essence in this regard, a net worth audit and not a books and records audit, and for those reasons the Government objects to the Defendant's Exhibits 23, 24 and 25.

The Court: The Court will hear counsel for the defendant.

[fol. 1077] Mr. Sillman: If the Court please, I am going to reoffer Exhibits 5-A, B and C, and so forth, which are the price tags identified by the witness, the defendant, used for display purposes, indicating prices of garments in the years of 1945, 1946 and 1947, which were made to measure. Now, I want to reoffer those in evidence, and of course, in fairness, if counsel wants to comment now, I ought to sit down or he ought to have an opportunity to comment on this which I have just injected.

(Exhibits 5-A to P were offered in evidence.)

The Court: I think we have one matter pending before the Court at this time which has not been disposed of. That is the motion to strike.

Mr. Sillman: I am tying them both together.

Col. Windom: I forgot one other matter. That is this. Mr. Friedberg has testified, and there might be some little dispute, but I think the record bears me out pretty thoroughly—"Then it was your policy not to enter reorders on your records?", and the answer was yes—indicating that those records which Mr. Forsythe has used, and without any criticism on Mr. Forsythe because it was all he had, were by the taxpayer's own admissions not complete, and those reorders would enter into those computations of suits.

Now, as to the other exhibits—to save time on it—when they were offered it is my recollection that the testimony in this case is—by Mr. Friedberg—that no price was ever set or displayed on any ready made suit.

[fol. 1078] Mr. Sillman: Now, if the Court please, we

started out in this case, at the very early stage of it, with an exhibit, Government's Exhibit 2, I believe, which is a net worth statement prepared by Mr. Clager and which the Colonel correctly stated is properly admitted in evidence and which Your Honor questioned us as to whether we had objection and we said no, and it was admitted in evidence.

Now, that is mentioned at this time by way of comparison to the schedules which are put in and offered now by the defendant. What's sauce for the goose ought to be sauce for the gander. If the Government can introduce a schedule, which schedule itself indicates has omitted cash, and which the witness himself testified that he did not have personal knowledge of whether the parties did or did not have cash—if that kind of a summary can be put in evidence, then what is wrong with the kind of a summary which is based on evidence? In other words, there was introduced, and I say properly so and without objection—if I had any objection, Your Honor certainly gave me a fair chance to voice it, and we had none and have none now—there was introduced in evidence here a net worth statement which was not predicated on evidence but was predicated upon a lack of evidence, and I choose those words very carefully. You have absolute and unequivocal testimony by the witness that he had no knowledge of whether there was or was not cash. So, that's an absence of evidence.

Now, in this instance—I am very sorry that we can't always agree on our recollections, the Colonel and I—but in connection with these matters here, if it please the Court, the defendant was specifically asked what was his average price for the sale of these ready made garments. The [fol. 1079] question is put specifically to him. Now, here is a man——

The Court: I wish, before you leave that, Mr. Sillman, that you would place that testimony for me in the record. I must confess that I don't know whether I have a recollection of that testimony.

Mr. Sillman: I would be most happy to do so, and I am confident that I can.

The Court: You can do it later.

Mr. Sillman: Now, you can, for the moment, take my

word for it and substantiate it by the record that the defendant testified that during the years in question he sold these ready made garments at an average price of \$32 or \$33.

The Court: Was there any testimony to the effect that he sold them at different prices or what he could get out of them?

Mr. Sillman: Yes, sir. There is no question but what the defendant sold garments for somewhat more perhaps.

The Court: I think it is needless to argue. We will check the record during the lunch period. It will be very helpful to the Court. In other words, the query in the mind of the Court is whether or not the basis for his information is merely what this gentleman told him or whether it is based upon evidence which is a part of the record.

Mr. Sillman: Now, let me just add one more point. I had a purpose in reoffering Defendant's Exhibits 5-A, B and so forth.

The Court: What was the purpose?

Mr. Sillman: I think that they were properly ruled out before and at the time I first offered them, because they [fol. 1080] were merely cumulative evidence of testimony which the witness gave concerning his sale of ready made sales. But, in connection with the immediate question before the Court and in support of the credibility of the statement made by the witness as to what his average price is, the testimony of a man who sells these, he ought to know what he sells them for, and the expert witness always takes the figure furnished by somebody else. There is nothing unusual in that.

The Court: What is there in the record?

Mr. Sillman: Here is the purpose. The purpose is this. The witness defendant has identified cards which he displayed on his merchandise, and of course, I want to be very clear, he did not display ready made suits. No ready made suits were hung in his window, so none of these cards apply to ready made suits, but these were cards that were pinned on the bolts, which represented his displays in the year of '45, and they read, "Custom Tailored to Your Order,

\$26.00," "Suits to Measure, \$27.00," "Suits to Measure, \$29.50," "Suits to Measure, \$34.00," "Overcoat, \$24.50."

The Court: Right at that point, Mr. Sillman—

Mr. Sillman: Now, my point is this, that since the defendant has testified that the made to measure business represented his better class business, which of course it would, if he sold suits made to measure for \$24.00, it supports his testimony that he sold ready made suits on an average of \$32 to \$33.

The Court: I do not think there is any necessity of further argument on these unless you want to be heard. If [fol. 1081] there is, I will hear you later. The Court is still inclined to think that these price tags are not admissible. There is nothing in the record to show whether he sold off these particular bolts or suits, what suits he sold after the customer got in there. Would not these price tags merely fortify the oral testimony of the witness himself?

Mr. Sillman: Yes, that is the purpose of it.

The Court: Are you permitted to do that?

Mr. Sillman: I think so.

The Court: Do you have any authority for it?

Mr. Sillman: No case authority.

The Court: During the lunch period you might get the Court some authority. The Court will reserve a ruling.

Mr. Sillman: I am not arguing so much about the price tags.

The Court: The Court is clearly of the opinion that the price tags are not admissible. I trust during the lunch period you will find Mr. Friedberg's testimony.

The Court will adjourn until two o'clock.

[fol. 1082] Examination by the Court:

Q. Mr. Forsythe, you have testified at some length on the exhibits which are marked as 23, 24 and 25. Is that correct?

A. That's right.

Q. One of those exhibits is a computation of income from ready made retail sales for the years 1945, 1946, 1947, and as a part of the computation, as evidenced from the summarized statement, you list 1409 suits at \$33.00, 80 over-

coats at \$33.00, 33 sport coats equal a certain number of suits in each instance.

A. Oh, yes.

Q. Did the Court understand you to say that these figures, to wit, \$33 and \$23, as applicable to suits, overcoats and sport coats, were furnished to you by the defendant David Friedberg?

A. The prices applicable?

Q. Yes.

A. Yes, sir.

Q. That is, your summarization was based in part upon the figures furnished by the defendant?

A. That is correct.

Q. Had these figures been different; for example, had they been \$40 instead of \$33, would your computation and summarization be different?

A. Yes.

Q. In other words, were they a part of the foundation, [fol. 1083] the base, upon which you formulated your computation and summarization, as evidenced by these exhibits?

A. Those prices were part.

Q. And, had these prices been some other figure, your computations and summarizations—

A. Would have been different, yes.

The Court: You may cross examine.

Cross examination.

By Col. Windom:

Q. Mr. Forsythe, I believe you said you audited for '44, '45 and '46, used Mr. Weiss' audit for '47?

A. I did not use Mr. Weiss' audit. Anything I did for '47 I did for myself.

Q. Did you conduct an audit for '47?

A. I audited partially as to '47. That is, checking the—analyzing the retail and wholesale sales which were specifically recorded, the cash receipt book as to the total receipts recorded, the amount of the items which were recorded under the designation D. Friedberg, and the amount of the accommodation items under those—in that particular year, 1947.

I did make some examination of the disbursements for the year 1947, but only insofar as they related to checks which were made out in payment of amounts which were paid to these finishing shops for making clothing or garments for him during the year.

Q. What I am trying to find out, what is the difference [fol. 1084] between what you did in '47 and what you did in the preceding years, if any, or was it the same?

A. In the preceding year I made a complete examination of all of the checks. That was the chief difference between '47 and '44, '45 and '46.

Q. Would it be correct to say that in '47 you conducted a partial audit?

A. I believe that would be correct.

Q. You said the miscellaneous income was entered in detail in 1944. What do you mean by miscellaneous income?

A. The designation of miscellaneous income, as I believe it was explained, or what I meant was, the items of cleaning, pressing, alterations and things of that type which were, as I recall, listed under that heading.

Q. Under what heading?

A. Cleaning, pressing, alterations in the year 1944.

Q. It is a fact that there actually were no miscellaneous items in 1944 but they were all specific entries, weren't they?

A. I would say they were miscellaneous in this manner, that the cleaning—the entries that were made for the cleaning, pressing and alterations did not show any specific customer names.

Q. Does the word miscellaneous appear at any time in the year 1944?

A. I don't believe it does.

Q. Then the hanging of the tag "miscellaneous" on that is merely your own appellation, shall I say?

A. That is correct.

[fol. 1085] Q. Now, how could you conduct an audit in 1944, a complete audit? How could you conduct a complete audit in 1944, Mr. Forsythe, if, as you have said, part of the records were missing?

A. There was not a complete audit made for the year

1944. The 1944 was a partial audit. 1945 and 1946 were complete so far as we had records. No, we could not, in the year '44, because there were some of the records that were not available.

Q. It was not possible to make a complete audit in '44 because of missing records?

A. That is correct.

Q. Now, if that be true, Mr. Forsythe, how could you verify those '44 items?

A. As to which? The items of what?

Q. Isn't it customary in a complete audit to verify your entries; in other words, verify your business?

A. Oh, well, there was not a complete audit in the year 1944.

Q. What you did, then, was in the effect of a figure balancing type of thing, is that right?

A. That is correct.

Q. You were handed Exhibits 8 to 12, which were retail order books, the looseleaf sheets which we have referred to as retail order books. Did you verify those, Mr. Forsythe?

A. In what way?

Q. Did you verify the truth of any of the entries?

A. No. In other words, the amounts which were recorded [fol. 1086] on there as sales or as a placing of an order for certain specific garments for a particular person were accepted as they were shown there.

Q. You just accepted the books at their face value?

A. I might say this. This much of a verification, that practically all of them; except for, as I said before, a few items which could not be checked, were specifically traced from the retail order book into the cash receipts book to determine whether or not money came into the business from those sales.

Q. Would that be customary in a detailed audit, to verify such a record?

A. I don't believe it would be, in a detailed audit, to verify or to attempt to verify the original entry.

Q. You said you examined the wholesale invoices. Those are Exhibits 13, 14 and 15, for the years '45, '46 and '47.

I believe you said that you could not find any for the year 1944.

A. That is correct.

Q. How did you audit those wholesale invoices?

A. In the same manner as the others, in that we analyzed those as to the cash receipts book to determine whether or not there was cash coming in from the sale or from the—yes, from the sale of the garments which were listed on those invoices.

Q. And, did you make any attempt to verify those invoices back with the billing organization?

A. You mean with the customer?

Q. Yes.

[fol. 1087] A. No, sir.

Q. The purchase invoices, which were Exhibits 16, 17, 19. I believe you said that you had those for all four years, '44 to '47 inclusive, is that correct?

A. We never were sure whether the ones for '44 were complete. In other words, we never had any method of checking back to determine whether or not they were complete for the year 1944.

Q. Did you attempt any verification to see if they were complete?

A. No, sir.

Q. The cancelled checks and bank statements, Exhibits 20, 21 and 22, which I believe you said were for '45, '46 and 47—were you able to find any for 1944?

A. No, sir.

Q. Therefore, there could be no audit of the cancelled checks and bank statements for '44?

A. That is correct.

Q. Did Mr. Friedberg ever display any duplicate copies of any bank deposit slips?

A. No, sir.

Q. Are you quite sure about that, Mr. Forsythe?

A. Yes, sir.

Q. Did you make any investigation at the bank yourself?

A. We had the bank furnish copies of some bank deposit slips for the years 1945, 1946 and 1947.

Q. You had the bank furnish those?

[fol. 1088] A. Yes.

Q. Where are those now, sir?

A. They are in my possession, but they are over at the office.

Q. You got those from the bank and not from Mr. Friedberg, is that correct?

A. That's correct.

Q. You said you examined the cash journal for 1944. Did you make any attempt to verify the accuracy of the cash journal?

A. No, not for the year 1944.

Q. Did you make any attempt to verify it for other years?

A. Only as to verification as against the orders which had been received in those years to determine whether cash was being collected from the orders which the wholesale invoices and the retail sales sheets showed that the orders were received.

Q. Did you make any verification as to whether the cash journal reflected all of the receipts or not?

A. So far as possible. As I stated, as to the wholesale sales and the retail sales, yes. As to others, the miscellaneous items that were recorded as D. Friedberg Loans or D. Friedberg, and the accommodation items, we would have no way of determining, having any basis or any other records to refer back to to actually determine whether or not that was correct as it was shown.

Q. My question is this. What I am referring to is a verification as to whether the cash book reflected all items of receipt, not whether the cash book went into the bank. But, is it my understanding that you made no verification [fol. 1089] to determine whether the cash book in itself was correct, sir?

A. We made no other examination as to the entries in the cash receipts book.

Q. As to the defendant's own records?

A. That is correct.

Q. Mr. Forsythe, you mentioned at this point—I am just trying to go through chronologically as my notes are—you mentioned accommodation items. What were those on the books? Not what you were told but what they actually appear as?

A. They appear as amounts of money received or re-

corded in the cash receipts book of the company in exchange for a check, let's say, of the company, which was used to pay a personal item of the defendant.

Q. How much were the accommodation items for 1944?

A. 1944?

Q. I would like to have it for each year if you have it.

A. The amount which I determined to be accommodation items for the year 1944 was \$1646.51. That item is slightly different than the figure which was shown on the statement.

Q. Yes. I am just referring to your own audit. What did you guess as a total for '45?

A. \$1993.11.

Q. 1946, please.

A. \$3347.60.

Q. 1947.

A. \$2494.77.

[fol. 1090] Q. Now, what type of items did this accommodation include, Mr. Forsythe?

A. As I recall, it included rent for their living, or their home apartment, for gas, electric, telephone, and I believe some insurance premiums, in general. There might have been a few other minor items.

Q. Would it be correct to say, then, that those accommodation items include what would be commonly known as living expenses?

A. I believe that would be right.

Q. Did you find at any time in those four years any grocery items or consumables of that types?

A. I don't remember grocery items.

Q. You said you made a comparison of the cash journal and work sheet for 1944 and you arrived at a difference of approximately \$3000, if I remember the figure. It wasn't exactly that, but I use that in round figures. Is that right, sir?

A. You mean the gross receipts?

Q. I assume that is correct, sir.

A. That was the approximate figure for the year 1944.

Q. Is it not correct, you could not reconcile that difference?

A. That is correct.

Q. I believe you said that in 1944 there were none of the so-called Friedberg or Friedberg Loan items?

A. That is correct.

Q. But, those appeared only in '45, '46 and '47?

A. Yes, sir.

[fol. 1091] Q. How did you know, sir, that those represented income rather than loans?

A. I didn't hear the question.

Q. How did you know that those represented income rather than loans?

A. I didn't know myself. They were included in the total amounts which were included in the income tax returns and in the work sheets as prepared by the defendant. I didn't know of my own knowledge that they were.

Q. I am trying to find out if you ever did come to know that they were not actual loans, and if so, what the source of your knowledge was.

A. Well, it was my understanding that they were income at the time that they were recorded. I got that information, I would say, from the defendant.

Q. Mr. Friedberg told you?

A. Yes.

Q. Now, Mr. Forsythe, if Mr. Friedberg had not told you that, how would you have carried those items in your audit?

A. They would have been miscellaneous items which we would have had no explanation for. In other words, so far as the amount shown in there themselves were concerned, there was nothing behind them where you could go and determine any amounts or determine actually what they were.

Q. And, if he had not told you they were actual income items, would you have carried them as income, sir?

A. Probably not.

Q. I think positively not would be the correct statement, [fol. 1092] wouldn't it? You wouldn't have carried them, would you?

A. I don't think so, without an explanation, no.

Q. If Mr. Friedberg had in fact told you that those were loans, how would you have carried them?

A. I don't know that I could answer that question be-

cause of the fact that he had shown them as income on those statements. Now, there would be a question in my mind, then, what they actually were. If he had shown them as income one place and then tell me they were not income, it certainly would be open to some question as to what they actually were.

Q. Why were you auditing, Mr. Forsythe?

A. Beg pardon?

Q. Why were you auditing?

A. In order to try to determine his income for those years.

Q. To determine the truth?

A. That's correct.

Q. And, that conceivably might not have been just a verification of the income, the tax return, isn't that so?

A. Oh, yes.

Q. Now, sir, if Mr. Friedberg had stated to you that those Friedberg or Friedberg Loan items were in fact loans, how would you have carried them in your audit?

A. If he would say that they were loans, I would say, I probably would have carried them as loans.

Q. You would not have carried them in taxable income, would you?

A. That's right.

[fol. 1093] Q. Mr. Forsythe, you said that you compared the '45 cash journal and work sheets and compared '46 and the work sheets. You stated in '46 that Mr. Friedberg's income tax return actually reported more income than his books reflected. Is that correct?

A. I believe that his—for the year '46?

Q. Yes, sir.

A. It reflected more in that particular year, yes, than was reported on the income tax return.

Q. Why would that be, Mr. Forsythe? I don't mean just a subtraction. You have already done that for us. Why would a situation like that come about?

A. Well, there is no positive way that you can check back on that. I assume that when they made up their income tax return they probably run off a tape of it, probably didn't check it back, and it was just that much off. They made errors probably in taking off figures, going

through the cash receipts journal. I don't know whether they checked it back or not. That would be the only explanation that I would have for it, for the differences in those years.

Q. You said in comparing the '47 cash journal and the work sheet, that there was discrepancy of some \$6000; that you didn't investigate, I believe, that so-called loan item of \$5300—and I use \$5300 just as a round figure, Mr. Forsythe. Is that correct that you did not investigate that?

A. That is correct.

Q. Why didn't you, sir.

A. I didn't investigate that miscellaneous because Mr. [fol. 1094] Weiss was doing the audit on that particular year, and all I was interested in doing was comparing the income there with the amount which was shown as gross income in the cash receipts journal.

Q. And, if you had made up the '47 return would you have conducted any investigation?

A. I think that I would have tried to find out what the item of \$5300 was and what the facts concerning it were.

Q. I believe you said that you made an analysis of retail sales in the order books for '45, '46 and '47. Did you verify those retail sales in the order book in any manner.

A. No.

Q. Then your analysis there, I take it, was purely a mathematical type of audit?

A. That is right, merely analyzing the invoices to determine what they showed as to the amount of the sale.

Q. You said, I believe, that you weren't requested to verify '44. Why not?

A. Well, in '44, so far as I know, there were no wholesale invoices for that year. I mean, they were not available to us. So that, actually, there was nothing in there to determine the amount of garments which had been recorded specifically because of the lack of wholesale invoices for that year.

Q. Now, you said that you analyzed the wholesale sales in the cash journal. How did you verify those, sir.

A. Simply by taking the wholesale sales and the cash journal and checking the invoices against amounts which

were recorded in the cash receipts journal from the [fol. 1095] same individuals.

Q. That, again, was a mathematical balance against Mr. Friedberg's records?

A. That is correct.

Q. I believe you said that there were no ready made sales records for '44?

A. That is correct.

Q. And that you analyzed the ready made records of '45, '46 and '47 to see if the sales went into the cash journal. What did you find?

A. Ready made or—I believe I said made to measure. I analyzed the retail from the sheets which we had up here this morning. Now, from the items which were recorded in the cash receipts book as the income from D. Friedberg or D. Friedberg Loans, there was no verification there simply because there was no record back of it that we could analyze.

Q. That's the reason I'm asking. I apparently misunderstood. I wrote down ready made. Actually, you mean, if you used the term you meant made to measure?

A. Yes.

Q. Now, you said, Mr. Forsythe, that you reconstructed Mr. Friedberg's income. Why was it necessary to reconstruct?

A. I would say it was necessary to reconstruct to determine whether or not the amount of garments which he had available for sale would have corresponded with the income which he had reported. In other words, in order to account in some way for the sales of the items which were listed in the cash receipts book under the designation of D. Friedberg or D. Friedberg Loans. There were no [fol. 1096] other records of specific sales from which those could be identified.

Q. That's what I am getting at. In other words, you had to reconstruct, sir, because of a lack of records, is that correct?

Q. Now, you say that you analyzed the invoices. Did you check the purchases for cash in New York City which Mr. Friedberg said that he had made a number of, in any way, sir?

A. No, sir.

Q. Did you make any investigation to determine whether the invoices for cleaning actually covered all the cleaning in fact done, or did you accept the records?

A. All that I had with the records which he had available at that time, plus the checks which were written for cleaning and pressing.

Q. Now, you testified as to your computations on what has been referred to as Exhibit 23, sir. Did you actually make up that computation, sir, or did Mr. Friedberg?

A. No, I made those computations.

Q. Am I to understand that that represents an independent investigation on your part?

A. So far as the amounts——

Q. Let me refresh your recollection. That's the computation on the number of garments made available on ready made retail sales.

A. That was the total garments available?

Q. Yes.

[fol. 1097] A. The amount there was determined by taking the amounts which were paid to the finishing shops for making garments and by dividing those figures by the average price which Mr. Friedberg stated that he paid in those years. That was the way those final figures——

Q. You didn't in fact find any records which showed you, on the records, that there were this number of garments?

A. No, sir.

Q. That was strictly a mathematical computation which you made based upon what Mr. Friedberg had said to you?

A. In that particular record, that is correct.

Q. And, I think you said that you found some minor discrepancies in that year.

A. I don't recall my statement in regard to that. Minor discrepancies in what?

Q. In relation to these ready made suits?

A. I don't——

Q. What I am getting at, Mr. Friedberg has testified that he checked his records and then went around to these places—Forney Tailors, Dirr Shop, T & T Tailors, Nick's Shop, Fetchheimer's and Weber Shop—and arrived at cer-

tain figures by actual investigation. You seem to have arrived at exactly the same figures as he did. How did you account for that, shall I say, coincidence?

A. He could have taken the number which he determined and divided it into the payments which he made. I don't know how he arrived at his average cost.

[fol. 1098] By the Court:

Q. Where did you get your information for the net sales of garments listed, the stock garments to be accounted for?

A. The net sales?

Q. Less stock suits on hand. Where did you get the information contained in Exhibit 23?

A. In Exhibit 23?

Q. Yes. Did you make a check or were these figures given to you by Mr. Friedberg?

A. As to the sales? No, I made my own analysis.

Q. Did you make a check as to the net sales of garments listed in detail?

A. That is correct.

Q. And, did you make a list of the stock garments to be accounted for? Did you make any check. I mean, of the stock suits on hand?

A. No. Well, see, I wasn't on this case until two years after this last year.

Q. Where did you get that information?

A. As to the inventory on hand, this was the number of suits which Mr. Friedberg stated he had on hand at the end of 1947.

Q. That is what Mr. Friedberg told you?

A. That is correct.

Q. And, that's the only information you have?

A. Yes, sir.

Q. You didn't do any checking; you accepted his amount?
[fol. 1099] A. That is correct.

Q. The same as you did for the value?

A. Sale price, yes.

Q. Sale price of coats, suits, jackets.

Now, if any of these things Mr. Friedberg had told you

had not been authenticated by check, your entire computation would have fallen and been in error?

A. That is correct.

The Court: Go ahead.

By Col. Windom:

Q. I hand you what has been marked Defendant's Exhibit 4 and ask you who prepared that, Mr. Forsythe?

A. I can't say who prepared it. I didn't.

Q. Well, Mr. Forsythe, will you look at my copy of Exhibit 23 and tell me who prepared that.

A. I prepared that.

Q. Would you lay any word over the top of any word of those exhibits and tell me if they weren't in fact prepared on the same typewriter?

Mr. Sillman: If the Court please, I can't imagine a more unfair approach to a proposition. It is one thing to prepare and supply the figures. It is another thing to have copies. Obviously, these things here, with the exception of perhaps one document, were copied. We required a copy for the Court, a copy for the record, a copy for Mr. Platt, a copy for Mr. Forsythe, a copy for Mr. Windom. We have retyped many of these things. They have been typed in [fol. 1100] our offices, typed up, but we didn't prepare them. He didn't ask if they were typed and who physically typed them.

Col. Windom: I move to strike the remarks from the record.

The Court: He asked who prepared them.

Mr. Sillman: Prepared is a——

Col. Windom: I move to strike the remarks from the record.

Mr. Sillman: It carries an inference that is unfair.

The Court: Now, the Court will instruct the jury not to pay any attention at any time to any statement of counsel at either table. You will be guided eventually by the evidence and the law as given you by the Court.

He may answer. Objection overruled.

A. I prepared this, the computation which is listed as Exhibit 23. I don't know who prepared this.

Q. I will ask you whether or not the figures are identical with your figures, sir?

A. The total figures shown on this sheet are identical with my figures.

Q. That's what I am referring to, the actual totals shown.

A. Yes, that's right.

Q. And, I will ask you, on that Exhibit 23, did you furnish that information to Mr. Friedberg?

A. On which one?

Q. On your Exhibit 23, sir, your computation of the number of garments available on ready made retail sales.

[fol. 1101] A. No, sir, I furnished a copy to Mr. Sillman. I don't know what he did with it after that.

Q. When did you furnish that to him, Mr. Forsythe?

A. I would say probably around—

Q. I am just asking for the approximate date.

A. Around the first of November, something like that.

Q. Of which year?

A. 1951.

Q. That would be approximately two or three months ago?

A. Yes.

Q. Referring to these sales records, do the items sport coats or overcoats appear at any time in the record, to your knowledge?

A. I don't know that the item sport coat does. There are listed coats and items designated as OC, which I understood from the defendant were overcoats.

Q. How many of those items "OC" are there?

A. I wouldn't have any idea. There are a lot of them.

Q. Mr. Forsythe—

A. Oh, you mean—well, yes, I think I can. In those particular years there were a total of 149.

Q. 149 what?

A. These sales that were designated OC in the three years, 1945, 1946 and 1947.

Q. Then, sir, if overcoats were carried as OC or some special designation to indicate overcoats on the records, why [fol. 1102] did you feel it necessary in Exhibit 24 to make the word "coats" into overcoats?

A. Well, the reason for that was that we knew that Mr.

Friedberg had sold, or we had had the information to that effect, that he had sold overcoats, some overcoats in stock, stock overcoats. In other words, the coat designation—we had more coats than pants. I mean on the reconstruction there. Whether they were actually overcoats, whether they were sport coats, whether they were suit coats, I don't definitely know. The reason for designating them as such was that since he had had sales of those particular items in the years, we felt that it should be broken down, those additional coats, into the respective category of overcoats and sport coats.

Q. Is there any record, to your knowledge, which justifies the classification that you have made, other than the assumptions which you have already given us?

A. No, sir.

Q. Did you find any record whatsoever from which you could establish the price on ready made suits?

A. No, sir.

Q. There was some reference to carry over orders, where an order, as I understood, was placed in the latter part of one year and not delivered until the next year. What was the amount of those carry over orders in 1945?

A. From '44 to '45 there were 30 coats and 51 pants.

Q. What did you carry the value of those at, sir?

A. I didn't attach any particular value to them. All I was doing was determining how many in number of garments were carried over.

[fol. 1103] Q. How many were carried from '45 into '46, sir?

A. I have no computation on that. The only two years which I had any computations on were at the beginning of '45 and at the end of '47.

Q. It didn't, by any stretch of the imagination, approach the figure of \$3000, did it?

A. Oh, no.

Q. Therefore, that item wouldn't account for any divergence between your audit and Mr. Clager's would it?

Mr. Sillman: I object to that. I don't know what that question even means.

The Court: He may answer if he knows.

A. I don't—these particular figures here would not.

Q. Mr. Forsythe, how did you carry in your audit the \$1000 in the safety deposit box in the Market Exchange Bank at Columbus, Ohio, which bears the date of December 5, 1945?

A. Deposit box? In the audit there I didn't—I don't know how it would affect the audit which I was making there.

Q. Did you know anything about that, sir?

A. I probably knew about it because I did have a record of the accounts, savings accounts, in the different banks.

Q. This is not an account, sir. It is a safety deposit box.

A. I didn't know anything about it.

Q. In the box was an envelope actually designated as 12/5/45, and there was \$1000 in it. Did you take that into account in your audit?

A. No, sir.

[fol. 1104] Q. And in that same box is another envelope dated November 1945, in which there was \$500. Did you take that into account, sir?

A. No, sir.

Q. Another envelope dated November 24, 1945, \$500.

Mr. Sillman: If the Court please, I am going to object, on this ground. Of course, the witness didn't take into account things that have no connection with his audit. I don't know the purpose of such a line of questioning, unless it is just to repeat their testimony. There is no connection between what is in a savings bank or what is in a vault and the audit that was made by the witness, and, of course, he will answer every one of these he didn't take them into account. He wasn't interested in them, and I object to that form of question. It doesn't serve any purpose.

Col. Windom: They are very important.

Mr. Sillman: How can it be important. Why didn't you ask him what took place next door.

The Court: I think you can reach it by a shorter method. In other words, if he didn't take into consideration the items in the safety deposit box, the witness can certainly answer that in one question without a series of questions.

Col. Windom: There has to be a breakdown of these items.

Mr. Sillman: You know he didn't go to any safe box.

The Court: Just a moment. Make your objection.

Mr. Sillman: I object because I think it is unfair for the Government to repeat.

[fol. 1105] The Court: That may be your version. You make your objection and the Court will make the rulings.

What is the purpose of this examination?

Col. Windom: To find out whether cash placed in a safety deposit box bearing a date of a period during his audit was taken into account by him.

The Court: Did you take into consideration any cash in the safety deposit box?

The Witness: No, sir.

Mr. Sillman: May I ask a question? May I also ask that the Court ask whether he took anything into consideration, not only cash?

The Court: You may ask that at the proper time. We are referring to cash at this time.

Mr. Sillman: Why segregate cash?

The Court: Did you take any items in the safety deposit box into consideration?

The Witness: No, sir.

By Col. Windom:

Q. Mr. Forsythe, when you make a complete audit, don't you take into account items deposited at other places other than straight commercial banking accounts?

A. If they could be identified they probably would be.

Q. You would take into account money deposited in a savings account, would you not?

A. If it was identified as coming from the business, yes. [fol. 1106] Mr. Sillman: I can't hear you.

A. If it was identified as having come from the business.

Q. Now, will you please distinguish between David Friedberg individually and David Friedberg in any one of these three names he used in business. What is the distinction?

A. I suppose legally there isn't any distinction. However, to make that part clear, I maybe should say that my examination included only the part in relation to his business and business records, and I did not take into considera-

tion anything in regard to safety deposit box or the savings accounts.

Mr. Sillman: I can't hear the last part of your answer.

A. I did not take into consideration anything—

Mr. Sillman: The last word.

A. Or the safety deposit boxes.

Q. Did you take into account any other bank accounts other than the one in the name of Buckeye Tailoring?

A. No, sir.

Q. Why was that, sir?

A. Because in that particular circumstance I did not know the source of the funds, and I did not inquire about the source of the funds which went into savings accounts.

Q. What was your reason for not inquiring, Mr. Forsythe?

A. I really don't know. I just was interested at that particular time in the business of the—I mean in his clothing business, I mean, of the transactions in the clothing business.

Q. Mr. Forsythe, if during the period you audited—'44, [fel. 1'07] '45, '46 and '47—there appeared sizeable deposits made by Mr. Friedberg in other bank accounts other than the Buckeye Tailoring Company, wouldn't you consider that those represented some relation to his business, or had some relation to his business?

A. They could have some relation to his business, or it might be strictly personal.

Q. And, in your auditing of the records, did you spend any time at his place of business, sir?

A. No, sir.

Q. Therefore, you of your own knowledge don't know whether he had any other source of income other than the tailoring business or not?

A. I do not.

Q. Now, if Mr. Friedberg did in fact make substantial deposits during the period of your audit and that income in fact came from his tailoring business, that would render your final totals inaccurate, would it not?

Mr. Sillman: I am going to object to the form of that question. That is an assumption of an ultimate fact which is not to be assumed.

The Court: Read the question.

(Question read.)

The Court: Overruled.

Mr. Sillman: May I just say to the Court, I don't want to quibble over this, but where is there the slightest evidence that money deposited in the savings account came from the current income, and that is implied in this question.

[fol. 1108] The Court: It seems to the Court that you interrogated Mr. Clager along the same lines, if he did not have something else which he did not discover. Apparently this reconstruction of his income is somewhat similar to what the Government has pressed as its version of his income. The objection is overruled. He may answer.

A. If the income was in fact from the business, it would be.

Q. It would render your results inaccurate, is that correct?

A. Yes, to that extent.

Q. Mr. Forsythe, if you set out to make a complete audit of the books and records of David Friedberg for the years 1944, 1945, 1946 and 1947, could it be done in any way except on a net worth basis?

A. Not just from the records which were available, it could not be done.

Col. Windom: That is all.

Redirect examination.

By Mr. Sillman:

Q. If you were preparing a net worth statement in this case, would you have made an assumption that the defendant, Mr. Friedberg, or Mrs. Friedberg, had no cash in any particular year?

A. I don't think that the assumption could be made. You have to go on what you would find out. I don't know.

Q. Now, if you had no personal knowledge of whether

they did or didn't have cash and money from savings in prior years, suppose you had no personal knowledge of that and admitted it, would you prepare a net worth [fol. 1109] statement in which you left out cash?

C. L. Windom: I am objecting to that.

Mr. Sillman: You opened the door for it.

Col. Windom: You are asking a leading question.

The Court: Yes, your question is leading. Sustained.

Q. All right, I will put it this way. Assume, Mr. Forsythe, that you had no personal or actual knowledge of whether Mr. and Mrs. Friedberg had cash saved from prior years, state whether or not you would or would not have prepared a net worth statement eliminating and omitting cash entirely there at the beginning?

A. We would not under those circumstances.

Q. State whether you have an opinion of whether you consider that kind of an assumption at the beginning, the starting point, under those circumstances fair or unfair.

Col. Windom: Object.

The Court: The use of the words fair or unfair is objectionable. Objection sustained. The Court will not bar you from inquiring whether it is correct or incorrect.

Q. Do you consider a net worth statement which omits cash at the beginning, as the one does in this case, correct or incorrect?

A. That would depend on what the facts would determine, whether or not they had cash at the beginning.

Q. Now, I am asking you to assume, of course, if you were the person involved—I am asking you to assume that you testified and take as a fact that you had no personal knowledge or actual knowledge of whether they do or [fol. 1110] don't have cash. Now, state, if you did have no actual knowledge of whether they did or didn't have cash, tell me now whether you have an opinion as to whether that net worth statement is correct or incorrect.

A. If I have no knowledge of whether or not they have cash, I wouldn't know whether it was correct or not.

Q. If you omitted cash, would it be correct to omit cash if you didn't know?

A. If you didn't know, no, it wouldn't be correct to omit cash.

Q. Now, if you had no actual knowledge and admitted—you are not the one that prepared this, understand. I am asking your expert opinion, if you were preparing this net worth statement. If you had no actual knowledge and no personal knowledge of whether they did or didn't have money accumulated from savings over prior years, and if you prepared a net worth statement which showed no cash at the starting point, do you have an opinion as to whether that net worth statement under those circumstances would be correct or incorrect?

A. I would say it probably would be incorrect.

Q. Would it contain anything more than just an arbitrary assumption?

A. Well, it would have to be an arbitrary assumption if you omitted cash from the beginning.

Q. In other words, Mr. Forsythe, when you admit you don't know something and you put it down or omit it, you are making an arbitrary assumption?

Col. Windom: I object. This is argumentative.
[fol. 1111] The Court: Sustained.

Q. There was one question which I think perhaps Judge Underwood started to put to you. I am not sure. There was some question about verification. Did you make any effort to verify the number of garments, the figures in connection with the computation on number of garments, which you said Mr. Friedberg furnished?

A. I did.

Q. Just tell us what kind of verification you made?

A. Well, I personally sent letters to the finishing houses asking them to give information as to the number of garments which they produced.

Q. Did you get replies from them?

A. I did, but I understood later that an actual or further check of those records indicated that the figures which they had given me originally were only approximate and that the figures which finally came out were higher than the figures which they had told me in letters.

Q. Now, I want to make that very, very clear to this jury, Mr. Forsythe.

Col. Windom: I object to your statement and move it be stricken.

The Court: Sustained.

Q. Now, let me ask this question. You say that in order to verify the figures you sent, that is, personally, letters to the finishing shops asking for the information, is that correct?

A. That is correct.

Q. And, you testified that you received replies; that is, [fol. 1112] replies written from these third parties, the finishing shops, to you?

A. That is right.

Q. Answering your letters, is that correct?

A. Correct.

Q. And, do I understand you to say that certain figures were supplied to you which were approximate figures in those letters?

A. That is correct.

Q. And that later on, after Mr. Friedberg made his independent investigation and his personal analysis, he furnished you with figures which were greater in number than the approximate figures that were furnished to you directly by the finishing houses?

A. He furnished me an average price which by determining out I came out to a higher figure.

Q. You came out to a higher figure?

A. That is correct.

Q. Now, explain—now, in making your reconstruction, which did you use, the higher figure based upon what information Mr. Friedberg furnished you, or did you use the lower figure based upon what information you got directly from the finishing houses?

A. I used the figure which Mr. Friedberg—

Q. You used the higher figure, is that correct?

A. It resulted in a higher figure.

Q. It resulted in a higher figure. And, what is the effect of a higher figure in this reconstruction as contrasted to a lower figure, as to the number of garments?

[fol. 1113] A. It made more garments that we had to account for, that had to be accounted for during the three-year period 1945 through 1947.

Q. And, made more income, too, didn't it, to have to be accounted for, isn't that correct?

A. I don't know. That might be an open question.

Q. I don't mean to be super technical. Maybe I have used the wrong word.

A. At least, it would result in having to account for more garments.

Q. When you say have to account for more garments, please explain that to me so that I can understand what you mean by that.

A. Have to account for more garments through the sale of stock suits or stock items.

Q. Suppose you had used the lower figure that you got direct from the finishing houses. Would you have had as many garments to account for as you account for in your reconstruction?

A. No, sir.

Q. You would not, and if you had less garments to account for, you would have less money to account for, wouldn't you?

A. That is correct.

Q. Well, that's the point. These shops that you wrote, were they the same shops that were exhibited to you, or shown to you on a paper that Mr. Windom just handed you: Forney, Dirr, T & T, Fechheimer, Weber? Are those the shops?

A. All except Weber.

Q. Weber is one in Columbus?

[fol. 1114] A. Right.

(A brief recess was taken.)

By Mr. Sillman:

Q. A statement was made by you that under certain circumstances you would not have carried the Friedberg Loan items as income. On what assumption was that statement made by you, Mr. Forsythe? What did you mean by that?

A. That was on the assumption that there was nothing else to show what had happened or how those items had been handled.

Q. Now, let's take this particular case and the facts of this case. What was there in this to show how the items were handled which would change your method of treating those items?

A. Well, there was in this particular case the work sheets which were attached to the income tax returns, showing the amounts of gross receipts, and with minor adjustments those amounts were carried into the income tax returns as gross income from the business.

Q. Now, based upon the facts of this case, the factors particularly that you just testified to, would you treat the loan items as income if they were called loans in the book, in the cash receipts journal?

A. I would call them income. In fact, that's what I did do with them.

Q. And, the fact that they may have been called in some instances D. Friedberg or D. Friedberg Loan or Friedberg Loan, that wouldn't make any difference as to how they were treated?

A. Not with the other evidence that was available.

Q. Now, of course, if you didn't have that other evidence, [fol. 1115] if you didn't know how much gross income the taxpayer returned, then of course you wouldn't know whether they were loans or income, would you?

Col. Windom: I object to the leading question.

The Court: Sustained.

Q. Did I understand what you mean, Mr. Forsythe, is that if you didn't know what the taxpayer—how much he included in his gross income and in his income tax work sheets, that under those circumstances you would not know whether to treat those items as loans or income? Is that what you meant?

A. Yes.

Q. Well, I got a different impression and I am trying to get myself clear on it. Now, we speak of verification of the types of income. You spoke of wholesale sales. Where were wholesale sales entered?

A. Wholesale sales were recorded originally on the invoices.

Q. And, were they recorded any place else?

A. The sales themselves were not. The receipts of cash from those sales were recorded in the cash receipts.

Q. I hadn't meant to be super technical in saying the sales themselves. Was the income recorded any place else?

A. Yes.

Q. Well, perhaps I better ask it to you this way, Mr. Forsythe. You tell me what was recorded in the wholesale sales invoices. I am not familiar with those accounting terms.

A. In the wholesale sales invoices, those records show the sales which were made to wholesale customers showing the [fol. 1116] names of the customers and the garments that were sold and the price.

Q. Now, what technical term or phrase or whatever you want to call it is entered in the cash journal?

A. Just the receipt of cash from when the customer would pay cash for those purchases went into the cash journal.

Q. Now, how do you relate the wholesale invoice and the entry in the cash journal? How are they related to each other?

A. They are related in that the one, the receipt is shown as in payment of the invoice which was sent out to the customer.

Q. How do you know? I am trying to ask you to give me the detail of it, please, Mr. Forsythe? How do you know that the entry in the cash journal is related to the invoice? Do they have the same name?

A. Oh, yes.

Q. In other words, if we take a wholesale invoice, and we will just call it arbitrarily Mr. X, would the entry in the cash journal be under the same name as the one in the invoice?

A. That is correct, for the payment of that invoice.

Q. So that on the wholesale invoices you had the names of customers in detail?

A. That's right.

Q. That is, the full name of the customer, is that correct?

A. That is correct.

Q. And the corresponding entry of cash in the cash journal had the same customer's name and amount?

A. That is correct.

[fol. 1117] Q. That's how these two things are related, is that correct?

A. They would be related in that way, yes.

Q. Now, when you spoke about verifying, you have an item here in the cash book, and it is just a name, and it is just an amount. I should ask this question. Were there any other writings in the cash journal that would indicate that this transaction was a wholesale transaction?

A. No, sir.

Q. Now, you have in the cash journal, then, the name of a person or company and an amount?

A. That is correct.

Q. Now, to verify that against the wholesale invoice, did you go to the wholesale invoices to look for that name and that amount?

A. That is correct.

Q. Is that what you mean by verification?

A. As between those two, yes.

Q. That's what I mean. I mean just between those two and not between any others.

You have a name and amount in the cash journal. And, is what you mean by verification that you went to the wholesale invoice and found a wholesale invoice for the same amount of money and the same name?

A. That is correct.

Q. So that the entry, then, is made; that is, the name and the amount is made just in two places instead of one?

A. That is correct.

Q. Made in the wholesale invoice and made in the cash journal?

[fol. 1118] A. That is right.

Q. Now, in connection with those retail sales in the order books which you verified, is that the same thing you mean by verification?

A. That is correct.

Q. If you found in the cash book—in the cash book was there any designation to indicate that the particular name and the particular amount was a made to measure suit?

A. No, sir.

Q. Did it indicate whether it was a wholesale transaction?

A. No, sir.

Q. Just a name and the amount?

A. That's right.

Q. Now, you took the name and the amount in those that you verified in the retail order books, and you went to the retail order books to find out if there was a name like the one in the cash journal and a corresponding amount. Is that what verification means there?

A. That would be right.

Q. Now, the only difference, then, in these two types of verification is that instead of the name and the amount being entered in one place only; that is, in the cash journal, it is entered in two places, is that correct?

A. Those amounts were entered in two places, yes.

Q. Wholesale were entered in the cash journal, of course, and then there is another entry of them in the wholesale invoices?

A. That is correct.

Q. And, made to measure sales are entered just like [fol. 1119] wholesale sales in the cash journal, name and amount, is that right?

A. That is correct.

Q. No distinction?

A. No, sir.

Col. Windom: I object to this line of questioning as leading.

The Court: Sustained.

Q. Now, is that what you mean by verification?

A. Yes.

Q. Now, Mr. Forsythe, from the standpoint not of verification but from the standpoint of income and income tax, does it make any difference if the income is entered in a cash journal under the name of the customer or under some general miscellaneous designation? Does it have any effect whatsoever on the income or income tax if it is all carried into the work sheet in the income tax return?

A. It would have no effect if it is in fact income.

Q. Well, we are going to assume that it is income, of course.

A. Then there would be no effect tax-wise.

Q. We are assuming that's income. Now, was there any difference between the name that you would verify representing a wholesale sale and one representing a retail sale. Did it make one particle of difference that in the cash journal there was nothing in there to indicate whether either one was wholesale or retail?

A. No, sir.

Q. Did it have anything to do with it?

The Court: I think counsel has been over that two or three [fol. 1120] times.

Mr. Sillman: That is all.

Recross examination.

By Col. Windom:

Q. When did you correspond with these, shall I say, manufacturing firms to get the figures from them on the garments?

A. In 1950.

Q. What period of '50?

A. I believe it was June.

Q. Do you have those letters with you?

A. Yes, sir.

Q. May I see them, please. Does that comprise all that was used in that tabulation, sir?

A. I think that's all.

Mr. Sillman: You have misunderstood. Those lower figures were not used in the tabulation. The higher figures were used.

Q. Mr. Forsythe, I notice that one of those firms furnished you cost figures to the Jacobson Manufacturing Company, is that correct?

A. Yes, sir.

Q. And, did you use those figures in computing your audit for Mr. Friedberg?

A. No, sir, I used the amounts which were shown as payments by Mr. Friedberg.

Q. Did you or didn't you use those figures?

[fol. 1121] A. I did not.

Q. You did not use those figures that they supplied?

A. No, sir.

Q. Now, Mr. Sillman asked you quite a few questions about how you would handle cash and lack of cash in making an audit. Mr. Forsythe, getting back to that situation, if you had found, in connection with the audit, a safety deposit box in which was \$1000 enclosed in an envelope with the date December 5, 1945, how would you have carried it?

Mr. Sillman: I object to that, if the Court please. He said he hasn't done any of that.

Col. Windom: Mr. Sillman asked him what he wouldn't do.

The Court: He may answer if he knows.

A. That would depend on the information which I would try to determine from the individual as to what the item was.

Q. My question assumes that that's all the information you have, the date on the envelope.

Mr. Sillman: I object to that because that assumption is certainly no basis for the—

The Court: Overruled. He may answer if he knows.

A. I don't believe I would know how to answer that.

Q. You never made an audit with anything like that?

A. Never have.

Q. You say you have or haven't?

A. That is correct.

Q. Give me the answer.

[fols. 1122-1124] A. I said I had not.

Q. You have never made an audit with that question in it?

A. And where there was no explanation as to what it was.

Q. What is your best judgment as to what you would do?

A. I would say that it probably would be income.

Q. And—

A. That is, until I had other information.

Q. If you treated it as such, what year would you put it in?

A. In the year it was recorded.

Q. That is the year, the date, that appears on the envelope?

A. Yes, sir.

Col. Windom: That is all.

Redirect examination.

By Mr. Sillman:

Q. Suppose you had other information, would you have done what Mr. Windom said?

A. I think you would have to go on what information you had.

Q. Why sure.

Mr. Sillman: That is all.

[fol. 1125] RENEWAL OF MOTION FOR JUDGMENT OF
ACQUITTAL

Mr. Sillman: The record will show, please, that at the close of the entire case the defendant renews his motion for judgment of acquittal.

The Court: Do you desire to be heard upon the motion?

Mr. Sillman: I don't think that I should impose upon Your Honor because we presented the matter. I don't think we could add anything to what we have already said.

The Court: Does the Government desire to be heard further?

Col. Windom: No, sir. I think that after all there are certain issues that arise here, and one of the largest ones was certainly taken out of the case a few moments ago when Mr. Forsythe conceded that this had to be a net worth audit. Our starting point, of course, revolves around foreclosures, and things like that, which certainly is an adequate starting point. The amounts are large enough that even though we be wrong to a substantial amount there, there is still plenty of evasion if the jury should find it upon which the verdict could be founded.

[fols. 1126-1127] The Court: The Court will overrule the motion made at the conclusion of the Government's case and reserve a ruling on the motion made at the conclusion of all the evidence.

[fol. 1128] CHARGE OF THE COURT AND INSTRUCTIONS TO THE
JURY

The Court: Ladies and gentlemen of the jury you have heard the evidence and it now becomes necessary for the Court to instruct you regarding the performance of your duties as jurors, and to charge you concerning the law governing this case. Briefly stated, you are the sole judges of the facts, the credibility of the witnesses, and the weight of the evidence.

If at any time in this charge I should give expression to any views as to the evidence; that is, what the evidence has shown, or with respect to the credibility of the witnesses, you will understand that I am expressing only my personal views, which are in no way binding upon you. You, and [fol. 1129] you alone, are the judges of the evidence.

It is the duty of the Court to instruct you as to the law, and you are required to accept the law as given you, without regard to any personal opinions you may have as to what the law is, or should be.

Likewise, it is the duty of the Court to discharge and dismiss the defendant if found not guilty by the jury; and to determine and pass sentence upon the defendant if found guilty by the jury. You are not concerned with any sentence or the terms thereof.

Now, ladies and gentlemen, the present case came into this Court by reason of an indictment returned by the grand jury against the defendant. The defendant has entered his plea of not guilty to the indictment. His plea has put in question and at issue, every material part and element of the indictment, and the burden of proof is upon the Government of the United States. Therefore, the Government is required to establish the truth of each essential element of the indictment beyond a reasonable doubt.

The fact that an indictment was filed against the defendant does not raise the presumption of guilt against him. The Court charges you that the law presumes that the defendant is innocent, until proven guilty beyond a reasonable doubt. If you can reconcile the evidence before you upon any reasonable theory consistent with the defendant's innocence, you should do so, and return a verdict of not

guilty. The Government, as I have told you, is required to prove its charge beyond a reasonable doubt.

The Court charges you that a reasonable doubt is a doubt based on reason, and which is reasonable in view of all of [fol. 1130] the evidence. And if after an impartial comparison and consideration of all the evidence you can candidly say that you are not satisfied as to the guilt of the defendant, then you have a reasonable doubt. But if after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction as to the guilt of the defendant, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt.

Your chief duty in the case is to determine the facts from the evidence presented to you, and to apply the law thereto. Therefore, you are to consider, determine, and interpret the facts in the light of, and in conformity with, the instructions given you by the Court.

In determining the facts, you must of necessity depend a great deal upon the testimony of the witnesses; therefore, the law has made you also the judges of the weight and credibility to be attached to the evidence given by every witness. In considering the testimony of a witness you may consider, among other things: his manner on the witness stand; the way in which he testified; his possible interest in the subject matter, or outcome of the case; his apparent candor and fairness, or lack thereof; the consistency or inconsistency of his statements; his bias or prejudice, if such is apparent; his intelligence; his opportunity of knowing the facts; whether or not his testimony is supported or contradicted by other witnesses; and finally, all the facts and circumstances which may reasonably aid you in judging its truth or falsity.

In addition to the testimony given by others, the defendant has testified in his own behalf; you are to weigh such [fol. 1131] testimony like you would that of any other witness, and apply the same tests to it.

In this case, as in many others, the witnesses do not agree as to the facts in question. In considering the conflicting

statements of different witnesses, it is your duty to reconcile them insofar as that may reasonably be done. You do not have the right to reject arbitrarily and without reason, any part of the testimony; but, having given all the facts and circumstances touching their credibility due consideration, it is for you to say to what extent the testimony of each and every witness is to be believed.

In considering the evidence before you, your attention is directed to the fact that not all matters properly coming to your attention in this trial can be considered by you as evidence. The indictment, the opening statements of counsel, the arguments of counsel, the remarks of counsel, and the remarks of the Court during the trial of the case are not evidence, and they are not to be considered by you as such in determining the facts of the case. This applies also to any evidence or statements which have been ordered stricken out or which you may have been instructed to disregard.

The exhibits that have been introduced and admitted in evidence are a part of it, and you are to consider them in the same manner as other evidence in the case. However, exhibits offered as evidence and not admitted by the Court are not to be considered by you at all.

Admissions made and stipulations entered into by counsel in open court and agreed to in your presence are evidence, and they are also to be taken as admitted facts.

In addition to the foregoing, you are entitled to consider [fol. 1132] the circumstances of the case and surrounding the case. Such circumstances may aid you in determining the ultimate issue, which is, of course, the guilt or innocence of the defendant. Conviction may be based wholly or partly upon circumstantial evidence; but in order to convict the defendant of the charges against him upon circumstantial evidence, it is incumbent upon the Government to prove each necessary circumstance beyond a reasonable doubt, and the consequences must flow naturally and logically from the circumstances so proved. Circumstances which may be reconciled with the theory of innocence as well as with the theory of guilt, should be reconciled with the theory of innocence.

Section 145 (b) of Title 26, United States Criminal Code, provides in part as follows:

*“(b) Failure to collect and pay over tax, or attempt to evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, shall be * * * punished.”*

The Government has charged that this defendant has been guilty of four separate violations of this provision of the Internal Revenue Code.

Count 1 charges that on or about the 15th day of March, 1945, in the Southern District of Ohio, Eastern Division, at [fol. 1133] Columbus, Ohio, David Friedberg did willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1944, by filing and causing to be filed with the Collector of Internal Revenue for the Eleventh Internal Revenue Collection District of Ohio, at Columbus, Ohio, a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of \$2,735.97 and that the amount of tax due and owing thereon was the sum of \$152.00, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$15,640.68, upon which said net income he owed to the United States of America an income tax of \$4,559.71.

Count 2 charges that on or about the 15th day of March, 1945, within the Southern District of Ohio, Eastern Division, at Columbus, Ohio, David Friedberg did willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1945, by filing and causing to be filed with the Collector of Internal Revenue for the Eleventh Internal Revenue Collection District of Ohio, at Columbus, Ohio, a false and fraudulent income tax return

wherein he stated that his net income for said calendar year was the sum of \$2,012.36 and that the amount of tax due and owing thereon was the sum of \$39.00, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$21,669.18, upon which said net income he owed to the United States of America an income tax of \$7,694.21.

Count 3 charges that on or about the 15th day of January 1947, in the Southern District of Ohio, Eastern Division, [fol. 1134] at Columbus, Ohio, David Friedberg did willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Eleventh Internal Revenue Collection District of Ohio, at Columbus, Ohio, a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of \$4,943.93 and that the amount of tax due and owing thereon was the sum of \$470.00, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$23,035.34, upon which said net income he owed to the United States of America an income tax of \$7,447.80.

Count 4 charges that on or about the 15th day of January, 1948, in the Southern District of Ohio, Eastern Division, at Columbus, Ohio, David Friedberg did willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Eleventh Internal Revenue Collection District of Ohio, at Columbus, Ohio, a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of \$7,223.05 and that the amount of tax due and owing thereon was the sum of \$1,355.57, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$42,276.91, upon which said net income he owed to the United States of America an income tax of \$19,590.02.

The indictment charges in connection with each count that the alleged violations occurred within the Eastern

[fol. 1135] Division of the Southern District of Ohio. It is incumbent upon the Government to prove beyond a reasonable doubt that the violations of law, if any, committed by the defendant, were made within the Eastern Division of the Southern District of Ohio. If the Government has failed to prove beyond a reasonable doubt that the offenses committed by this defendant, if any, were committed within the Eastern Division of the Southern District of Ohio, then you must find this defendant not guilty under all counts wherein there has been such failure of proof.

It is not necessary for the Government to prove that the acts were committed on the exact dates named in the indictment. It is sufficient if it be established that they were committed on or about that date.

Now, ladies and gentlemen of the jury, there are four counts in this indictment for your consideration. You will try this case as to each of these four counts just as if they were standing alone as a separate charge and you will report your verdict and findings upon each of these four particular counts.

It is not necessary that the Government establish that the amount of income received and the amount of tax owing were exactly the amounts alleged in the various counts of the indictment. It will be sufficient if the Government proves beyond a reasonable doubt that there was a willful and knowing attempt to evade a substantial part of the income tax due as alleged in the separate counts of the indictment.

In general, to establish any violation of the federal law heretofore quoted, the Government must establish three elements of the crime beyond a reasonable doubt. These three necessary elements are (1) an attempt to defeat or [fol. 1136] evade the tax; (2) that such attempt was willful; and (3) that there was an additional tax owing.

Concerning the first essential element of the alleged crime, that is "an attempt to defeat or evade", the Court charges you that the word "attempt" as used in this law involves two parts: (1) an intent to defeat or evade the tax, and (2) some act done in furtherance of such intent. The intent phase of the attempt contemplates that the defendant had knowledge and understanding that during the calen-

dar years in question he had an income in such years which was taxable, and which he was required by law to report; and that he attempted to evade or defeat the tax thereon or a substantial portion thereof, by purposely failing to report all the income which he knew he had during such calendar year and which he knew it was his duty to state in his returns for such year.

Now, ladies and gentlemen of the jury, if you believe this defendant acted in good faith in making his tax returns, believing that they truly reflected his income for the respective years, then he was not guilty, nor would negligence or carelessness unaccompanied by bad faith render him guilty. But the duty to file the return is personal, and it cannot be delegated. Bona fide mistakes should not be treated as false or fraudulent, but no man who is able to read and write and who signs a tax return is able to escape the responsibility of at least good faith and ordinary diligence as to the correctness of the statement which he signs, whether prepared by him or somebody else.

Now, concerning the second phase of the word "attempt", there are various schemes, subterfuges and devices that [fol. 1137] might be used in an attempt to defeat or evade the tax. The method alleged in all counts of the indictment is the filing of a false and fraudulent return with the intent by so doing to defeat the tax or a large part thereof. In other words, to establish the "attempt" to evade, the Government must establish beyond a reasonable doubt both the intent to evade and that false and fraudulent returns were filed as an act in furtherance of the effort to evade.

Now, ladies and gentlemen of the jury, if you find that the Government has failed to prove beyond a reasonable doubt that the defendant attempted to defeat or evade the tax due and owing the United States in connection with any count or counts of this indictment, then your verdict must be for the defendant as to such count or counts.

On the other hand, if you find that the Government has proved beyond a reasonable doubt that this defendant attempted to defeat or evade a tax due and owing the United States, in connection with one or more counts in this indictment, then you must next consider whether the Government has proven beyond a reasonable doubt the other essential

elements of a violation of the Federal statute heretofore given.

As to all counts, if any, you find the Government has proved beyond a reasonable doubt, the defendant attempted to defeat or evade the tax, you must next consider whether or not such attempted evasion, if any, was willful. In this connection the Court instructs you that the word "willful" means not only intentional or knowing, but "done with a bad purpose . . . without justifiable excuse . . . stubbornly, obstinately, and perversely." However, the tax evasion does not have to be the dominant motive in defendant's conduct. Wilfulness may be established if tax evasion [fol. 1138] plays any part in the conduct of the defendant.

Now, ladies and gentlemen of the jury, if the Government has failed to prove beyond a reasonable doubt both an attempt to evade tax due and owing the United States Government, and that such attempted evasion, if any, was willful, then your verdict must be for the defendant as to each count in which both of these essential elements have not been proved beyond a reasonable doubt.

In the counts, if any, in which the Government has proved beyond a reasonable doubt, attempted evasion, and that such attempted evasion was willful, then you must next consider whether or not the Government has proved beyond a reasonable doubt that there was an additional tax owing the United States Government.

In this case the Government is trying to establish an additional tax owing by a method known as the net worth method, which method is authorized where the bookkeeping methods of the defendant do not clearly reflect the income of the defendant. If you find that the taxpayer's bookkeeping methods do clearly reflect his income, then the Government has no right to use the so-called net worth method and your verdict must be for the defendant in this case as to all counts of the indictment. The net worth method is proof in the form of circumstantial evidence and in connection with the third essential element of the alleged crime, which is proof of an additional tax owing, the Government is relying solely on this method. In other words, the Government is not trying to prove by direct evidence that an additional tax was owing in connection with any of the counts charged.

In order to establish by circumstantial evidence an additional tax owing, it is necessary that the Government must prove each necessary circumstance beyond a reasonable doubt, and it is also necessary that the Government prove that the consequences flow naturally and logically from the circumstances so proved.

A clear, concise and reasonably accurate determination of the net worth of the taxpayer at the start of the taxable period, a source of income during the period, and an increased net worth at the end of the period, which increase exceeds reported income, and established personal expenditures during the period, are necessary circumstances which must be proved beyond a reasonable doubt before the element of additional tax owing may be established by the net worth method.

In other words, if the taxpayer's increase in net worth at the end of the period exceeds his reported income and established personal expenditures during the period, and a source of income is shown, we have circumstances which if proven beyond a reasonable doubt permit you to conclude that an additional tax is owing, if you also find that this is a consequence which flows naturally and logically from circumstances so proven.

On the other hand, if the Government fails to prove beyond a reasonable doubt the clear, concise and reasonably accurate determination of the net worth of the taxpayer at the start of the taxable period, then your verdict must be for the defendant as to each count, if any, where there has been such failure of proof. Or if the Government does prove beyond a reasonable doubt a clear, concise and reasonably accurate determination of the net worth of the taxpayer at the start of the taxable period, but fails to also prove beyond a reasonable doubt a source of income to the [fol. 1140] taxpayer, then your verdict must be for the defendant as to each count, if any, where there has been such failure of proof.

Also, if you find that the Government has proved beyond a reasonable doubt both a clear, concise and reasonably accurate determination of net worth at the beginning of the tax period, and a source of income during the tax period, but you find that the Government has failed to prove beyond

a reasonable doubt that the net worth of the taxpayer at the end of the tax period exceeded the sum of his net worth at the beginning of the period, and his reported income and established personal expenditures during the period, then your verdict must be for the defendant as to each count where there has been such failure of proof.

If you find that the Government has proved all three circumstances heretofore described beyond a reasonable doubt, that is, an accurate net worth at the beginning of the period, a source of income to the taxpayer during the period, and a net worth at the end of the period in excess of the beginning net worth and reported income and established expenses for the period, but you find that the Government has failed to prove beyond a reasonable doubt that a tax owing the Government was a consequence which flowed logically from the three circumstances thus proven, then your verdict must be for the defendant as to each count, if any, where there has been such failure of proof.

Concerning any counts which the Government has proved beyond a reasonable doubt an attempt to evade, and willfulness, but has failed to prove beyond a reasonable doubt that there was an additional tax owing, your verdict must be for the defendant. However, as to those counts, if [fol. 1141] any, that the Government has proved beyond a reasonable doubt, (1) an attempt to evade as heretofore defined, and (2) that such attempt was willful as heretofore defined, and (3) that there was an additional tax owing established by the net worth method heretofore outlined, then your verdict should be guilty as to such count or counts, if any, where all of these essential elements have been so proven.

On the other hand, concerning any count or counts where the Government has failed to prove beyond a reasonable doubt all of the essential elements just given, your verdict must be for the defendant.

In this case, testimony has been given by expert witnesses, expressing opinions upon various questions. This class of testimony is proper and competent concerning matters involving knowledge, skill, or experience in some subject which is not within the realm of the ordinary experience of mankind and which requires special training, re-

search or study to understand. The law allows those skilled in that special field to express opinions, and upon a hypothetical state of facts given them, to say whether or not, according to their experience and research, a fact may, or may not, exist. But nevertheless, while such opinions are allowed to be given, it is entirely within the province of the jury to say what weight shall be given to them. Jurors are not bound by the testimony of experts. Their testimony is to be canvassed and weighed as that of any other witness. Just as far as their testimony appeals to your judgment, convincing you of its truth, you should adopt it, but the mere fact that a witness is called an expert, and gives opinions upon a particular point, does not necessarily obligate the jury to accept his opinions as to what the facts are.

[fol. 1142] As I have stated to you before, it is not necessary that the Government establish that the amount of income received and the amount of tax owing were exactly the amounts alleged in the various counts of the indictment. It will be sufficient if the Government proves beyond a reasonable doubt that there was a willful and knowing attempt to evade a substantial part of the income tax due as alleged in the separate counts of the indictment. On the other hand, the Government must prove beyond a reasonable doubt all of the essential elements of the charge as heretofore outlined before you can return a verdict of guilty in connection with any count of the indictment. Also you are reminded that circumstances which may be reconciled with the theory of innocence as well as with the theory of guilt, should be reconciled with the theory of innocence.

Now, ladies and gentlemen of the jury, as I have told you before, there are four counts in this indictment for your consideration. You will try this case as to each of these counts just as if they were standing alone as a separate charge and you will report your verdict and finding upon each of these four particular counts.

In this Court in all cases, all twelve jurors must agree upon the verdict returned. No verdict can be returned unless you all concur in it. When you return to the jury room you will select a foreman, who may be either a gentleman or a lady. The foreman will sign the verdict on the line

where the word "Foreman" is printed and the other eleven jurors will also sign the verdict.

The indictment and exhibits and the charge of the Court will go to the jury room with the jury. When you have arrived at your verdict you will notify the officer stationed at the door of the jury room and he will inform the Court.

Ladies and gentlemen of the jury, in charging you as to what Count 2 charges, the Court used the year 1945 when it should have said 1946, and in reference to the United States Code the Court used the word criminal code when it should have been Section 145 B of Title 26, United States Code.

Now, ladies and gentlemen of the jury, three forms of verdict will be submitted to you. The first form reads as follows: "District Court of the United States, Southern District of Ohio, Eastern Division. United States of America vs. David Friedberg, No. 5972 Criminal. We, the Jury, herein do find the defendant, David Friedberg, not guilty in manner and form as charged in the indictment." There is a place for the Foreman to sign and a place for the other jurors to sign. You will use this form if you desire to find the defendant not guilty in connection with all counts of this indictment.

Verdict No. 2 reads as follows, with the same caption and same case number: "We, the Jury, herein do find the defendant, David Friedberg, guilty in manner and form charged in the four counts of said indictment," with a place for the Foreman to sign and the other eleven jurors to sign. This form of verdict you should use if you find the defendant guilty under all four counts of this indictment.

Form No. 3 is a blank form of verdict. You should use this form of verdict if you desire to find the defendant guilty on one or more counts of said indictment but not guilty in connection with the other counts of the indictment. [fol. 1144] If you use this blank form of verdict you must specifically designate by *number under which counts you* desire to find the defendant guilty and under which counts you desire to find the defendant not guilty.

I think you will have no difficulty in interpreting the forms of verdict which the Court is sending with you.

Ladies and gentlemen of the jury, you may now retire to the jury room and begin your consideration of the case. It has now been finally submitted to you.

(The Jury retired to the jury room at 3:30 p. m.)

(The Jury returned to the Court room at 5:20 p. m.)

The Court: Ladies and gentlemen of the jury, is there any possibility of an early verdict?

Juror No. 7: Judge, it doesn't look like it.

The Court: The hour is getting late. This case has required many days to try. I want the jury to have sufficient time and opportunity to thoroughly investigate it, in order that you may be fair with the Government, the United States, and with the defendant. Unless there is objection on the part of counsel for the Government or defendant the Court intends to let the jury go for the night, with instructions they return here at ten o'clock tomorrow morning to [fol. 1145] resume their deliberations.

The Court hears no objection.

Ladies and gentlemen of the jury, the Court intends to permit you to go at this time, with instructions that you return at ten o'clock tomorrow morning. You are not to resume your deliberations until all the jurors are present. And, during the interim you are to follow the instructions of the Court in every respect. You are not to talk about the case, you are not to permit anyone to talk to you, you are not to permit anyone to discuss the case in your presence. You will consider everything in abeyance until tomorrow morning at ten o'clock, until you return to your jury room to resume your deliberations.

With those instructions and with the approval of counsel, the Court will permit you to go until ten o'clock tomorrow. You will return to your jury room at that time, and after you are all present you will resume your deliberations.

FRIDAY MORNING SESSION

January 11, 1952

(The jury returns to the jury box at 12:30 p. m.)

The Court: It is the intention of the Court to permit the jury to go to lunch. Is there objection?

Col. Windom: There is none.

The Court: Ladies and gentlemen of the jury, I assume you eventually get hungry. The Court intends to excuse [fol. 1146] you at this time. The Court will permit you to go at this time for lunch, with the understanding that you are not to discuss the case during the intermission, you are not to permit anyone to discuss the case with you, you are not to permit anyone to talk about the case in your presence. You will go to lunch and return at one-thirty and you will resume your deliberations when all the members of the jury have returned from lunch.

The Court will stand in recess until one-thirty. The Court may say to the jury at this time that I want you to make an honest and sincere effort to reach an agreement as to the merits of this case. I do not want you to shirk your duty. I want you to be fair to the Government, the United States, and the defendant. Nevertheless, this case has taken many days to try, and I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict, if possible.

You may return at one-thirty.

VERDICT

(The jury returns to the jury box at 3:15 p. m.)

The Court: Mr. Marshal, is the jury ready to report?

The Marshal: They are.

The Court: You may bring them in.

Ladies and gentlemen of the jury, have you reached a verdict?

Juror No. 7: We have.

The Court: You may pass it to the Clerk.

The Clerk will report the verdict.

Clerk Pixley: District Court of the United States, Southern District of Ohio, Eastern Division. United States of [fol. 1147] America vs. David Friedberg, No. 5972 Criminal.

We, the Jury, herein do find the defendant David Friedberg guilty in manner and form as charged in the 2nd, 3rd, 4th counts of said indictment and not guilty as charged in the remaining counts thereof.

Signed Clarence Ewing, Foreman, and endorsed by each and every member of the Jury.

The Court: The verdict will be filed in accordance with law.

[fol. 1148]

HEARING ON MOTIONS

The Court: This matter is for hearing on motion for judgment of acquittal, renewal of motion for judgment of acquittal made at the close of the evidence, and motion in the alternative for a new trial.

Mr. Sillman: The Court has correctly stated that there are three motions before the Court. One motion is for judgment of acquittal, the second is a renewal of the motion for judgment of acquittal, on which motion the Court reserved judgment during the course of the trial, and the third is the alternative motion for new trial in the event that either of the above are overruled. But, I shall confine my statement to this Honorable Court exclusively to the motions that are before the Court, nothing else being before the Court until those motions are disposed of.

The Court: That is true, the Court is hearing you at this time on your motion for a new trial.

Mr. Sillman: Your Honor, of course, can well recognize that we just recently went through a rather long and difficult trial, and the verdict of the jury was guilty on counts 2, 3 and 4 and not guilty on count 1.

During the course of that trial—and this was said before the Court gave its charge to the jury—I paid a tribute to this Court, and I should like to renew that tribute now after the Court's charge has been before me and after I have had a chance to hear it. Your Honor was, beyond any question of a doubt, extremely fair to the defendant and to the Government. The charge, which involved a very intricate phase of law which is most difficult to grasp and understand, was entirely fair in every respect, and I am quite [fol. 1149] conscious of the fact that I am stating this into a record which is a permanent record when I say that to Your Honor, so it is not an idle compliment.

The case involved, as you know, purely a net worth case. There wasn't a scintilla or word of evidence of direct fraud or wilfulness of any kind, character of description. It

was purely a net worth case, a circumstantial case. There was no evidence, no claim of any evidence of any specific act of fraud.

The first question, of course, is whether the net worth system of computation was proper to be used in this case. We prepared a memorandum and we have cited a number of cases: the Gariepy case of the Sixth Circuit, the Brodella case; the Fenwick case of the Seventh Circuit; the Bryan case of the Fifth Circuit, and I am confident that Your Honor has well grasped the law that is involved in those cases, as I measure on the basis of the charge which Your Honor gave.

So that in our brief we cover first the proposition of whether the net worth system and computation should have been used on the basis of adequacy of records. So, it is our position here now, and I shall not labor it more than by this brief statement, that measured by the standard of adequacy of records it is our feeling that the case was, in the first instance, not a proper case for the application of the net worth method of computation.

The second proposition is that if the net worth method of computation was to be used the Court must recognize, we feel, that this case, as measured by the facts reported in the reported cases, is the weakest case for the application of net worth computation of any reported case.

[fol.1150] The second point, therefore, is if the case on the basis of some inadequacy in the records was a proper case for the use of the net worth statement method of computation of income, was the starting point established by clear evidence. Was it established accurately as required by the cases. Now, we briefed that matter in the brief and I won't labor that more, except to point out this simple statement: No direct evidence of any fraudulent act, a purely circumstantial case, starting point based squarely upon an FHA statement in 1939, the gap being filled by the intervening record of income tax reports, no concealment of records, complete cooperation in the disclosure of records, cooperation in the disclosure of the safety deposit box in the maiden name of Mrs. Friedberg which the agents knew nothing about. All of those elements put together lead me to a conclusion that the starting point was not

sufficiently established, because these incidents—the FHA statement, the foreclosures, the mortgage loans—are just as easily reconciled with innocence as they are with guilt. They are just as consistent with one thing as the other, and I don't think they quite come up to that standard which the courts have laid down, requiring the starting point to be established clearly and accurately by competent evidence. So, that is our second proposition.

Now, it is the third proposition that I desire to argue at this point and place the greatest emphasis on, over and above the first and second propositions. It is referred to briefly in our supplement to the original memorandum, and of course, it is woven into the original memorandum. If it please the Court, I must accept the fact that our courts do accept the net worth method of computing income as a [fol. 1151] proper method under certain cases. Flowing from the statute which says that if the accounting records of a defendant are not sufficient the Commissioner may use such other method as he deems proper, springing from the authority of that statute the Bureau developed this net worth computation of income. Net worth expenditures, it is called. But I cannot fail to say to Your Honor, and I say it with utter frankness, that the computation of net worth increases, the use of the net worth expenditure method, is at best a weak method of computing income, because in fact it is not a computation at all, could not possibly be a computation, and at best it is nothing more than the introduction of circumstantial evidence from which an estimate of income may be inferred if the jury accepts those circumstances. So, I emphasize, first, that while the net worth computation might be a little bit more freely accepted by the courts in connection with civil cases, that in my humble judgment the acceptance of the net worth method of computation in determining a man's net income should be scrutinized very carefully where such a serious thing as a criminal case is involved.

Now, we had a very peculiar situation in this case despite the very fair charge which the Court gave, despite the absolute utter fairness of the Court in his rulings throughout the entire trial, despite the absence of any misconduct on

the part of the District Attorney, and I am sure none is blamed on my part, despite all of those things, in a case which apparently ran very smoothly, we had a most peculiar thing happen. We had a verdict of acquittal, a verdict of not guilty, for the year of 1944. I won't refer to counts; I will refer to years. Not guilty for 1944, guilty for 1945, 1946, 1947. I hardly need say to Your Honor that if [fol. 1152] the net worth expenditure method were eliminated from this case, if Defendant's Exhibit 2 were eliminated; that is, the computation of income, and the evidence supporting that, there couldn't be any question but what there just wouldn't be any case left because that's all there was in the case. I also must say to Your Honor that every shred—and this is of great importance—every shred of evidence which would in any manner support or tend to support the basic facts included in the net worth computation were pre 1944 incidents: the foreclosures, the statements and so forth. Not one single shred of evidence was given concerning any act or circumstance occurring after 1944 which would be the basis for establishing a starting point.

Now, when the jury found the defendant not guilty of count 1 they did so—and we must assume since we cannot speculate as to what happened in the jury room—they did so following the Court's charge. As I said, based on the Gariepy case and the Brodella case, Sixth Circuit cases, the Fenwick case of the Seventh Circuit, based on all of these cases Your Honor very carefully charged the jury that the Government bears the burden of proving the basis of the net worth method of computing income; that is, the starting point. The Government bears the burden of proving that by proof beyond a reasonable doubt, and it must be clearly and accurately established by competent evidence. That runs through all of the circuit decisions, and of course, Your Honor was following the circuit decisions, and that is the law, no question about it: clearly established, the starting point, and accurately established, and I underscore accurately; and by competent evidence, and I underscore "by competent evidence."

I am the last to say, in connection with this branch of our [fol. 1153] motion, if all of the other phases of it were to

be overruled by the Court, I am the last to say to Your Honor that the jury could not have found the defendant guilty on all four counts. I am the last to say that if this was a proper case in which they could accept the net worth basis of computing income that the jury could not have accepted the Government's starting point and disregarded the defendant's evidence.

But in this case, in the argument made by the District Attorney, the entire tenor of the case, all of the evidence that was introduced, there were two sharply divided lines. On the one hand the Government said that all of the expenditures made during the net worth period of '44, '45, '46 and '47 were made out of current income. On the other hand, the defendant, supported by the testimony of his wife, supported by the further testimony of two disinterested witnesses, gave evidence tending to support his claim that all of the funds that were expended during the net worth period were funds accumulated throughout prior years and did not represent current income.

Now, the lines were clearly drawn. The Government could have omitted prosecution on '44 had it desired. The Government could have given a starting point in 1945 had it desired. Anything could have happened, but we are concerned in this case with what did happen.

May I say right now that I am not going to argue or claim inconsistency in the verdict because I recognize, Your Honor, that the circuit courts uniformly have held throughout the land, and the Supreme Court itself has so held, that inconsistency alone is not grounds for a new trial. It probably would not be grounds for judgment of acquittal. The [fol. 1154] language has always been "not grounds for new trial."

There is something more than inconsistency. When the jury returned its verdict it had before it the Court's charge which said to the jury that "unless the Government has established its starting point in this net worth computation by clear and accurate evidence, you will disregard the net worth computation." That's the law of all of these circuit cases, and I have seen Your Honor's charge and it is correct. Therefore, when the jury returned a verdict of not guilty on the first count involving the year of '44, they

File this return with Collector of Internal Revenue on or before March 15, 1945. Any balance of tax due (shown below) must be paid in full with return. See separate instructions for filling out return.

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1944

1944

or fiscal year beginning 1944, and ending 1945

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2 (Rev.), as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.

Do not write in these spaces

File
CodeSerial
No. 7083761

District

(Cashier's Stamp)

NAME David Friedberg

(PLEASE PRINT. If the return is for a husband and wife, use both first names)

ADDRESS 180 South 3rd Street

(PLEASE PRINT. Street and number or rural route)

Columbus

Ohio

Social Security
No. (if any) 275-03-9810

(City or town postal zone number)

(State)

11th DIST. OF OHIO

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives with 1944 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

NAME (Please print)	Relationship	NAME (Please print)	Relationship
David Friedberg	Self		
Francis	Wife		
Elaine	Daughter		
Wayne	Son		

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

PRINT EMPLOYER'S NAME	WHERE EMPLOYED (CITY AND STATE)	AMOUNT
		\$

Enter total here → \$

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation)

4. If you received any other income, give details on page 3 and enter the total here

2,735 97

5. Add amounts in items 2, 3, and 4, and enter the total here

\$ 2,735 97

If item 5 includes income of both husband

and wife, show husband's income here \$

wife's income here \$

GOVERNMENT'S EXHIBIT

unequivocally and irrefutably disregarded the starting point, rejected the starting point, and without a starting point for a net worth computation no computation can be made.

Therefore, it is not a question of inconsistency in the verdict of a jury by not guilty on one count and guilty on other counts, but by its verdict of not guilty—and, of course, the Government cannot ask this Court to set aside the verdict of not guilty on count 1; it must stand under any and all circumstances—therefore, by its verdict of not guilty on count 1 the jury unequivocally rejected the starting point for the four-year net worth computation of income, and having rejected the starting point, having by such a verdict denied the starting point, there was no basis for any judgment on any of the other counts. Taking the net worth computation out of this case there is no evidence, no direct evidence at all. It is purely circumstantial.

Now, we call to the Court's attention a recent case, *United States vs. George Allen*—the citation is given in full in our brief—a decision by the District Court for the Southern [fol. 1157] District of California. I recognize, Your Honor, that *United States v. George Allen*, decided by a very able District Judge in California, is not necessarily binding on this Court under the theory of *stare decisis*, but I also recognize that when a reported case contains good common horse sense and sound reasoning, that even though it may be given by a brother District Judge and may not be conclusively binding on the Court, the Court is at liberty if he so desires to give consideration to the reasoning that is contained in such a case to determine in his own mind what reasoning to apply to a parallel case. So, I am not citing *George Allen* in the sense that it is binding, and I am terribly regretful, sir, that there isn't a Sixth Circuit case or a Supreme Court case that has this same decision in it. This is the only case we have been able to find.

In the *George Allen* case there were two counts involved: '44 and '45, and the pattern of evasion, if any, in that case was the same in '44 as in '45. There couldn't be any question about it, the man either was or was not guilty. The Court gave a charge in respect to consideration of each count separately in almost the identical language that Your

Honor used in this case, and that is a correct charge, and the Court in this opinion upholds its own charge, as it were, stating that that was intentionally given and given correctly that they must consider each charge separately. That is required.

Now, the jury found the defendant not guilty for the year of '44 but found him guilty for the year of '45, and on the basis of that verdict, not on the basis of inconsistency because inconsistency itself is not sufficient—a verdict may be inconsistent without being basis for a new trial—but [fols. 1156-1160] the Court said that the relevancy of the action of the jury lies in the fact that the acquittal on count 1 exculpates the defendant as to all matters relating to the two taxable years. And that, Your Honor, is precisely what we have in this case.

I may grant to Your Honor that the jury had a right—that is, as we know law, regardless of what I personally feel about it; my conviction that the defendant has at all times been innocent is not a matter to be injected in this case—so as a lawyer I must say to Your Honor that while the jury may have had the right to accept the Government's starting point, it did not, and I am not asking the Court, as counsel did not ask in the Allen case, that the Court enter the judgment of acquittal on the subsequent years on the basis of inconsistency, but paraphrasing the language which is used in the Allen case, I say to Your Honor that to me it seems absolutely, absolutely inescapable that the relevancy of the action of the jury in finding the defendant not guilty for the year of '44 exculpates him as to all of the pre 1944 incidents that bore upon or had any tendency to bear upon the establishment of a net worth case. The starting point was utterly, utterly and unequivocally destroyed.

[fol. 1161] The Court: Counsel has made a very able argument in behalf of his motion for a new trial and for judgment of acquittal. The Court is aware of the fact that counsel has set up as one of his reasons for new trial the instructions which the Court gave during the course of the trial. Now, counsel has not touched upon those instructions. Are you insisting upon that ground? The Court

instructed the jury as follows and counsel complains about it:

“The Court may say to the jury at this time that I want you to make an honest and sincere effort to reach an agreement as to the merits of this case. I do not want you to shirk your duty. I want you to be fair to the government, the United States, and the defendant involved. This case has taken many days to try and I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict if possible. You may return at 1:30.”

[fol. 1162] Are you insisting upon that ground?

Mr. Sillman: I am so very glad you asked that question because the Court has misunderstood us. This charge—and again I say it knowingly for the record—is absolutely correct. We merely put this into this memorandum as being perhaps a suggestion, the only reason we might have known, that might have been the reason, on the basis of such a charge, that the jury went out and entered a compromise verdict.

The Court's charge is correct, entirely correct.

The Court: Counsel have been very fair with the Court throughout the trial of this case, and I want to commend you for that. You have been a partisan, but the Court will take judicial notice of the fact that you have a right to be a partisan. You have been eminently fair in your presentation to the Court; however, the Court was more or less disturbed as to how much importance you were attaching to the sua sponte instruction of the Court at the time the jury went to lunch, as to whether or not you were seriously contending that the charge which the Court has just read to you, which was given at the luncheon period with the thought in mind that it might assist the jury in compromising and adjusting their differences and reaching a verdict, whether it be guilty or not guilty, was in error, whether or not you are insisting on that as a ground of error in this case.

Mr. Sillman: No, we are not.

The Court: Then you are not insisting upon this special instruction which the Court has just called to your attention?

Mr. Sillman: I think it is correct. I think Your Honor [fol. 1163] gave it absolutely correct. I don't think we have at any place said it was incorrect.

The Court: After quoting the Court's charge you say, "The jury apparently took literally the Court's suggestion and brought in this split verdict within a relatively short time after returning from lunch. Furthermore, in view of the nature of the evidence, the verdict of not guilty on count 1 has the effect of exonerating the defendant as to all counts of the indictment.

Of course, that goes on. I am interested alone in this instruction which the Court gave.

Mr. Sillman: I think your instruction was correct.

The Court: In other words, you are not claiming error on account of that instruction?

Mr. Sillman: What we tried to say here is this. We are confronted with about the most peculiar situation I have ever heard in a criminal case. I don't think that I have ever known of a case that has come up exactly as this has. There is no question but what where there are four counts there may be a verdict of one not guilty and so forth. They go back and forth. But, don't forget, here is a peculiar case based exclusively on a net worth computation, and the fellow is or isn't.

The Court: The Court has followed your argument along that line.

Mr. Sillman: We were, first of all, stunned and amazed by the verdict of guilty on the three charges, but we were equally amazed that there should be a split verdict, and no possible way of explaining——

[fol. 1164] The Court: I think the Court has followed you carefully on the arguments you have made. The Court was attempting to clarify your motion, as to whether those were your grounds upon which you based your motion for judgment of acquittal and motion for new trial, or whether you were attaching any weight whatever to the charge given during the deliberation of the jury. Now, if the Court understands you correctly, you are not insisting that there was any error upon the part of the Court in that respect.

Mr. Sillman: That is entirely correct.

The Court: The Court will hear counsel for the United States.

Col. Windom: If your Honor please, it is actually a little difficult for me to answer a contention which I honestly do not quite get the gist of. If I understand correctly, and I don't believe I do because I do not follow Mr. Sillman. Mr. Sillman's contention is that a verdict of not guilty for the year 1944 tears a gap in the evidence at that place. I don't understand how by any legerdemain of reasoning that can be held to be true.

We started, and there is no attempt to change any starting point, with the net worth statement which he actually executed—I call it a net worth statement, Exhibit 7—the FHA statement, with all of its substantiating surroundings, the three foreclosures, the hearing before Judge Randall, the dropping of the deposit boxes at that time, and so on. I think we have a very good starting point.

It was said that this was a circumstantial case. Well, every case on net worth is purely circumstantial. If it weren't circumstantial it would not be a net worth case. Therefore, all of that does have to be circumstantial, and [fol. 1165] as long as the inferences follow logically, as Your Honor instructed, there is nothing wrong with it.

Here is the reason I don't think any gap is created at all. Why should a verdict of acquittal on '44 create a gap when the voluntary permission of the Government for the statute to run in 1943 didn't create a gap. If one created a gap why wouldn't the other? Why wouldn't the running of the statute in '42 or '40 create a gap? In other words, I don't see why a verdict of acquittal would have any more influence than one of the others.

Now, I say, while I would much preferred to have seen a conviction on all counts, I think the jury is adequately justified in exactly what they did, for this reason. In 1943 we had, of course, only returns. In 1944 there were no false entries on the books that we were able to show. The false entries—and I use the word false realizing that Mr. Sillman disagrees with my appellation of those entries—the Friedberg Loan entries started in '45. The Handler box was in '45. The use of the fictitious name started. And, I can see how the jury said this. "Why, yes, maybe he had

income in excess of that in '44, but we feel the evidence insufficient to show a willful intent to evade in that year. Whereas in the next year we have the use of the fictitious name, we have the fictitious or false entries on the books, the loan items and that. Therefore, we accept the Government's figures in '44 as their net worth." And, it need only be a substantial acceptance of it. "We accept those figures but we believe that no intent was shown in that year."

That can be further justified by the defendant's own testimony. You will recall Mr. Friedberg testified that his [fol. 1166] sale of ready made suits—and those were the ones that had no fixed price—greatly increased, pyramided, if you please, skyrocketed, in '45. I argued that. I don't remember, I said not over two dozen words about 1944 in my argument. My entire argument was based around the theory of the Government that the bulk of this income was in '45, '46 and '47, that it came from these ready made suits and it came as a result of the termination of a great war when many people whose waist line had either gone up or down, generally up, had come home and, like myself, were unable to get in any clothes they had. That business, by the testimony, started in '45.

The jury can accept every figure or substantially every figure and say, as Mr. Sillman suggested, "There was no intent in '44. Why shouldn't we acquit him." But, in '45 started the use of Handler, the loan entries, the other things. I see no gap in that at all. Consequently, I feel that there was perhaps some consideration for the verdict of the jury. I am aware that some people wished the verdict was on four counts and some wished it was on none, but I see nothing to quarrel with.

The Court: In other words, you think you are in honest disagreement with that, but no other points.

Mr. Sillman: May I answer a statement made by counsel?

The Court: You may.

Mr. Sillman: I listened to my good friend—and I mean that—I listened to him argue this case before the jury, and of course there is no closing, no sur-rebuttal in an argument before the jury, but I couldn't follow then and I certainly

can't follow now the line of argument that says that in 1945 when the Government claims about a \$16,000 understatement, [fol. 1167] that in that year 1945 is when the boys were coming back, buying suits, and in 1947 the Government claims \$42,000. I thought that they probably had bought those suits by 1947. So that there doesn't seem to be much basis for that claim. I would say that that argument might have some basis if in 1945 the under-statement had been \$42,000, but it is the other way around. That refutes that argument. So much for that.

Now, false entries. You know, that just gets my dander up when the Colonel mentions that. I say that for this reason. Whenever a Government agent—and I will say the agent in this case was 100 per cent honest in his testimony—when he admits that the money designated by a label A, B, C or D went into the bank account and the sum total of the amounts on the cash book, including that item, correspond favorably with the amounts in the work sheet in the income tax returns, when you have such a situation—I am not going to take any time of this Court quibbling on whether this in the book is the item called Friedberg or Friedberg Loan or A, B, C or D; add up the cash book and it comes out the same. Every bit of that went into the income tax return.

Now, Your Honor correctly admitted that evidence, and since he mentioned that I want to give you my reason, my understanding of why Your Honor introduced that evidence. It doesn't have a bit of relevancy to this case except in one point only. It was evidence properly admitted on behalf of the Government to establish the proposition of whether this was a case in which it could in the first instance use a net worth computation. If you had books and records that had every customer's name listed in detail and you examined all of these cases that permitted the use [fol. 1168] of a net worth computation, why this Court, following that law, would have said to the Government, "What's your basis for using a net worth computation when you have got complete records with every customer's name." It's only because of these lump sum miscellaneous items in '45 that the Government was permitted to use a net worth system.

Now, the pattern of evasion, which we vehemently deny and protest against, but the pattern of any evasion was exactly the same in '44, '45, '46 and '47 as it was in any of the years. It stands or it falls, and it must stand or fall. The statement of finding no intent for '44. How could that possibly be. Suppose the jury had found that he had income for the year of 1944 of \$16,000 more than he returned on the basis of the facts in this case. Do you think we for one minute could argue that the jury would have had no right to infer that that was willfully evaded? What excuse did we offer against it if it was income? Our claim was that it was not income, so that there is no basis at all for the claim that the jury might have found that a man deliberately left off of his books \$16,000, deliberately failed to enter it, but could have come to a conclusion that he didn't do it willfully. We on the defense would be the first to admit that if he did it he did it willfully, and of course, that finding, therefore, of not guilty on '44 destroys—it isn't a question of gap—destroys the starting point. We are not talking about gaps, we are talking about a starting point. There is none because of the jury's verdict, not upon what it might have done.

[fol. 1169]

SENTENCE—April 8, 1952

The Court: The Court has remarked on different occasions that it is not a pleasant task to administer criminal justice. This case took several weeks to try. It was especially well tried on behalf of the Government and the defendant. Able counsel, representing the parties, presented the case to the jury under the instructions of the Court. The jury returned a verdict of guilty on three counts. It is not for this Court to make the determination, under the American system of government. The jury has made that determination, that the defendant is guilty. I do not think, and the Court is not facetious, that anyone could have made a more able presentation of his case, Mr. Sillman, than you made in this Court. I do not think anyone could have made a better presentation than Col. Windom made. The case was well tried, it was well argued, and if the Court committed any error in its instructions, an up-
[fol. 1170] per court will have to determine that fact.

The Court understands your position as to the verdict of the jury, but this Court has carefully reviewed your argument, and it is of the opinion that the verdict should stand, and it so ruled.

Now, no additional punishment is ever administered by this Court because a man stands trial. A man has a right to stand trial so long as he thinks, he says, he is not guilty. He is tried in the American way, and this man was so tried, but I think he got a fair trial. But, he took a calculated risk. There is something to be said of a man, if he is guilty, of coming and saving the Government thousands of dollars in trying him. But, that is only on the assumption that he is guilty. If a man protests his innocence, he ought to continue to protest it, and he has a right to be tried and he was tried by a jury of his peers and he was found guilty.

It is not a pleasant task for the Court in this case, after listening to all the evidence, to impose sentence. However, it is a duty which the Court cannot escape.

Do you have anything to say, Mr. Friedberg, as to why the judgment of the Court should not be imposed upon you?

The Defendant: Well, Your Honor, there is very little I can add to what Mr. Sillman has already told you. But, in the past five years we have suffered tremendously; that is, since the investigation took place. We have been tormented, we have been embarrassed and disgraced. And, for what? And, I say to you, before God, that I am innocent of this charge, and I don't use the Lord's name in vain.

I just want to say that in our declining years, and I respect your wisdom, I implore you not to separate us.

The Court: You have a fine family, as your counsel said. You are not a racketeer, you are not one of the big fish in escaping tax, but a jury said, Mr. Friedberg, that you are guilty. Taxes are burdensome to all people. They have been burdensome ever since the days of Christ. They are still burdensome. Nevertheless, the jury had said that you tried to escape your taxes by fraudulent means, and they have so found.

The Court will impose a sentence of eighteen months on count 2 and a fine of \$10,000, a sentence of eighteen months

on count 3, a sentence of eighteen months on count 4, the sentences on counts 2, 3 and 4 to run concurrently.

You will be remanded to the custody of the Marshal.

Col. Windom: I believe it is statutory that costs also have to be imposed.

The Court: You will stand committed until the fine and costs are paid.

Reporter's certificate to foregoing transcript omitted in printing.

[fol. 1176] IN UNITED STATES DISTRICT COURT

JUDGMENT—April 8, 1952

On this 8th day of April, 1952 came the attorney for the government and the defendant appeared in person and by counsel.

It is Adjudged that the defendant has been convicted upon his plea of Not Guilty, and a verdict of guilty of the offenses of Evasion of income taxes as charged in Counts 2, 3, and 4 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Eighteen (18) Months on Count 2 of the indictment herein and a fine of \$10,000.00 and costs, stand committed until paid. Eighteen (18) months on each of Counts 3 and 4 to run [fol. 1177] concurrently and concurrent with sentence on Count 1 herein.

It is further ordered that the defendant herein be granted a stay of execution for a period of ten days.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States

Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Underwood, United States District Judge.

The Court recommends commitment to:

(Signed) ———, Clerk, (By) Howard E. Parker,
Deputy Clerk.

IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE
FOR A NEW TRIAL—Filed January 14, 1952

Copy to D. A. office

1. The defendant by his counsel moves the Court for a judgment of acquittal.

2. The defendant by his counsel renews his motion for a judgment of acquittal made at the close of all the evidence.

3. In the alternative, the defendant by his counsel moves the Court for its order granting a new trial.

Justin L. Sillman, Joseph S. Platt, Attorneys for
Defendant.

[fols. 1178-1186] IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTIONS—Filed March 28, 1952

This cause coming on to be heard upon the motion of defendant for judgment of acquittal or in the alternative for a new trial; and the questions involved having been submitted on briefs and the Court having carefully considered the same, and being fully advised in the premises, finds that said motions are not well taken and the same are hereby Overruled.

Underwood, Judge.

Your Income

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) Enter total here → \$

4. If you received any other income, give details on page 3 and enter the total here

2,735 97

5. Add amounts in items 2, 3, and 4, and enter the total here

\$ 2,735 97

If item 5 includes income of both husband and wife, show husband's income here, \$; wife's income here, \$

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 2. This table, which is provided by law, is based on the same tax rates as are used in the Tax Computation on page 4. The table automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 4.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 4. You may either take a standard deduction of \$300 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

6. Enter your tax from table on page 2, or from line 15, page 4

152 00

7. How much have you paid on your 1944 income tax?

(A) By withholding from your wages (Attach Withholding Receipts, Form W-2)

\$ 165 60

(B) By payment of Estimated Tax

165 60

Enter total here →

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here

\$

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here

\$ 13 60

Check for overpayment: Refunded to you ☐; or Credited on your 1945 estimated tax ☒

Tax Due or Refund

If you filed a return for a prior year, what was the latest year?

1943

To which Collector's office was it sent?

Columbus

To which Collector's office did you pay amount claimed in item 7 (B), above?

Columbus

Is your wife (or husband) making a separate return for 1944? No

If "Yes," write below:

("Yes" or "No")

Name of wife (or husband)

Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been prepared by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return)

(Date)

(Signature of taxpayer)

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

(SEE TAX TABLE BELOW)

EXHIBIT 1-B

Do not use this form if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in) \$	4. Total amount received this year \$
2. Amount received tax-free in prior years	5. Excess, if any, of line 4 over line 3
3. Remainder of your cost (line 1 less line 2)	6. Enter line 5, or 3 percent of line 1, whichever is greater

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule I)	4. Repairs (explain in Schedule C)	5. Other expenses (explain in Schedule C)
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)				

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 100F)

(State (1) nature of business Tailoring; (2) business name Buckeye Tailoring Co.)

1. Total receipts		\$ 61,831 83	2 6 * Does Not include wages paid David Friedberg and reported on Form W2
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Separate lines "C," "C" or "C" on line 1 and 2 if inventories are valued at either cost, or cost or market whichever is lower)			
2. Inventory at beginning of year	\$ 4,822 00		
3. Merchandise bought for sale	\$ 21,276 74		
4. 21,276 74 52,375 50	\$ 24,058 90		
5. Material and supplies	\$ 1,790 82		
6. Other costs (explain in Schedule C)			
7. Total of lines 2 to 6	\$ 51,948 56		
8. Less inventory at end of year	\$ 5,691 06		
9. Net cost of goods sold (line 7 less line 8)	\$ 46,257 50		
OTHER BUSINESS DEDUCTIONS			
11. Salaries and wages not included as "Labor"	\$ 4,020 50		
12. Interest on business indebtedness	\$ 100 00		
13. Taxes on business and business property	\$ 1,868 60		
14. Losses (explain in Schedule C)			
15. Bad debts arising from sales or services			
16. Depreciation, obsolescence and depletion (explain in Schedule F)			
17. Rent, repairs, and other expenses (explain in Schedule C)	\$ 6,849 26		
18. Amortization of emergency facilities (attach statement)			
19. Net operating loss deduction (attach statement)			
20. Total of lines 11 to 19	\$ 12,838 36		
21. Total of lines 9 and 20	\$ 59,095 86		
22. Net profit (or loss) (line 1 less line 21)		\$ 2,735 97	

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

Name and address of partnership, syndicate, etc.	Amount, \$
Name and address of estate or trust	Amount, \$
Other sources (state nature)	Amount, \$
Total	

Total income from above sources (Enter as item 4, page 1) \$

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

Curtis

DUPLICATE

RECEIVED
JAN 12 1948
THE STATE OF OHIO

CONSENT FIXING PERIOD OF LIMITATION UPON ASSESSMENT OF INCOME AND PROFITS TAX

January 5, 1948

In pursuance of the provisions of existing Internal Revenue Laws

David Friedberg, 180 S. Third Street,

, a taxpayer

(or taxpayers) of Columbus, Ohio

and

the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named

taxpayer (or taxpayers) for the taxable year ended 1944 under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1949, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

David Friedberg
Taxpayer.¹

Taxpayer.¹

[SEAL²]

By

George J. Schoeneman
Commissioner of Internal Revenue.

FORM 1040
U.S. DEPARTMENT OF THE TREASURY
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

FOR CALENDAR YEAR 1945

1945

1942 and ending 1943

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2, as your return, if your total income was less than \$3,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.

Do not write in these spaces

File
Code **7C70046**
Serial
No.

District
(Cashier's Stamp)

NAME David Friedberg
(PLEASE PRINT If this return is for a husband and wife, use both first names)

ADDRESS 180 South Third Street
(PLEASE PRINT. Street and number or rural route.)

Columbus Franklin Ohio
(City or town, postal zone number) (County) (State)

Occupation **Tailor** Social Security No. **275 03 9810**

List your own name.

If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instruction 1) with 1945 incomes of less than \$300 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your Exemptions

1.	Name (please print)	Relationship	Name (please print)	Relationship
	Your name David Friedberg			
	Francis Friedberg	X X X X X X X X X X		
	Elaine Friedberg	Wife		
	Wayne Friedberg	Daughter		
		Son		

-Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1945, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues,

insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see instruction 2.

Your Income

[illegible]

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation)

4. If you received any other income, give details on page 2 and enter the total here

5. Add amounts in items 2, 3, and 4, and enter the total here.....

If item 5 includes incomes of both husband and wife, show husband's income here, \$ wife's income here, \$

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 2.

IF YOUR INCOME WAS \$5,000 OR MORE. Disregard the tax table and compute your tax on page 1. You may either take a standard deduction of \$300 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE. If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due
\$

6. Enter your tax from table on page 4, or from line 15, page 3 \$ 39.00

7. How much have you paid on your 1945 income tax:
(A) By withholding from your wages
(B) By payments on 1945 Declaration of Estimated Tax

\$	490	20
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GOVERNMENT'S EXHIBIT 1-C

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1945, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see instruction 2.

Your Income

2.	Print Employer's Name	Where Employed (City and State)	Amount
			\$
			Enter total here → \$
3.	Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation)		
4.	If you received any other income, give details on page 2 and enter the total here		2,012 36
5.	Add amounts in items 2, 3, and 4, and enter the total here		\$ 2,012 36

If item 5 includes incomes of both husband and wife, show husband's income here, \$ _____ wife's income here, \$ _____

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN \$5,000. You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 16 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 2.

IF YOUR INCOME WAS \$5,000 OR MORE. Disregard the tax table and compute your tax on page 2. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE. If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due or Refund

6.	Enter your tax from table on page 4, or from line 15, page 3	\$	39.00
7.	How much have you paid on your 1945 income tax:		
	(A) By withholding from your wages	\$	490 20
	(B) By payments on 1945 Declaration of Estimated Tax		
		Enter total here →	490 20
8.	If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here	\$	
9.	If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here	\$	452.61

Check (✓) whether you want this overpayment: Refunded to you ☒ or Credited on your 1946 estimated tax ☐

If you filed a return for a prior year, what was the latest year? 1944
 To which Collector's office was it sent? Columbus, Ohio
 To which Collector's office did you pay amount claimed in item 7 (B), above?

Is your wife (or husband) making a separate return for 1945? No
 If "Yes," write below
 Name of wife (or husband) _____
 Collector's office to which sent 452.61

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) _____ (Date) _____

(Signature of taxpayer) _____ (Date) _____

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

EXHIBIT 1-C

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	2. Amount received tax-free in prior years	3. Remainder of your cost (line 1 less line 2)	4. Total amount received this year	5. Excess, if any, of line 4 over line 3	6. Enter line 5, or 3 percent of line 4, whichever is greater (Attach separate schedule for each annuity or pension)
---	--	--	------------------------------------	--	--

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Expense (explain in Schedule G)	5. Other expenses (explain in Schedule G)
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)				

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should attach Form 1040F)

(Enter (1) nature of business tailoring (2) business name Buckeye Tailoring Co.)

1. Total receipts	\$ 37,471 65
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C" or "I" or "M" on lines 2 and 3 if inventories are valued at either cost or cost or market, whichever is lower)	
2. Inventory at beginning of year	\$ 5,691 06
3. Merchandise bought for sale	\$ 11,369 00
4. Inventory at end of year	\$ 12,832 45
5. Material and supplies	\$ 1,635 85
6. Other costs (explain in Schedule G)	
7. Total of lines 2 to 6	\$ 31,828 44
8. Less inventory at end of year	\$ 5,102 00
9. Net cost of goods sold (line 7 less line 8)	\$ 26,426 44
10. Gross profit (line 1 less line 9)	\$ 11,045 21
OTHER BUSINESS DEDUCTIONS	
11. Salaries and wages not in line 4	\$ 3,284 74
12. Interest on business indebtedness	
13. Taxes on business and business property	\$ 2,810 25
14. Losses (explain in Schedule G)	
15. Bad debts arising from sales or services	
16. Depreciation, obsolescence and depletion (explain in Schedule F)	
17. Rent, repairs, and other expenses (explain in Schedule G)	\$ 3,937 96
18. Amortization of emergency facilities (attach statement)	
19. Net operating loss deduction (attach statement)	
20. Total of lines 11 to 19	\$ 9,032 85
21. Total of lines 9 and 20	\$ 35,459 29
22. Net profit (or loss) (line 1 less line 21)	\$ 2,012 36

*Does not include wages paid David Friedberg & Reported on Form 1040

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

Name and address of partnership, syndicate, etc.	Amount,	\$
Name and address of estate or trust	Amount,	
Other sources (state nature)	Amount,	
Total		

Total income from above sources (Enter as item 4, page 1)

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Actual fully depreciated to end of year	5. Depreciation claimed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated percentage of recovery to be taken beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

6. Other costs (explain in Schedule G).....			17. Rent, repairs, and other expenses (explain in Schedule G).....	3,937	96		
7. Total of lines 2 to 6.....	\$ 31,828	44	18. Amortization of emergency facilities (attach statement).....				
8. Less inventory at end of year.....	5,102	00	19. Net operating loss deduction (attach statement).....				
9. Net cost of goods sold (line 7 less line 8).....	26,426	44	20. Total of lines 11 to 19.....	\$ 9,032	85		
10. Gross profit (line 1 less line 9).....	\$		21. Total of lines 9 and 20.....	\$ 35,459	29		
			22. Net profit (or loss) (line 1 less line 21).....			2,012	36

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D).....
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D).....

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

Name and address of partnership, syndicate, etc.....	Amount, \$.....
Name and address of estate or trust.....	Amount, \$.....
Other sources (state nature).....	Amount, \$.....
Total.....	

Total income from above sources (Enter as item 4, page 1).....

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (if building, state nature of other construction)	2. Date acquired	3. Cost or other basis (do not include land or other nondepre- ciable property)	4. Assets fully depre- ciated in any of last year	5. Depreciation al- lowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column of line No.	2. Explanation	3. Amount	4. Column of line No.	5. Explanation	6. Amount
17	Sample Lines.....	\$ 1,336 63	17	Bank Service Charge.....	\$ 44 00
17	Insurance.....	204 69			
17	Advertising.....	531 32			3,937 96
17	Heat, Light & Telephone.....	321 32			
17	Rent.....	1,500 00			

10-5097-1

Medical and dental expenses

Net Expenses (not compensated by insurance or otherwise)

Enter 5 percent of item 5, page 1, and subtract from Net Expenses

Allowable Medical and Dental Expenses See Instruction for limitation

**Miscellaneous
(See instructions)**

Total Miscellaneous Deductions

TOTAL DEDUCTIONS

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income	\$	
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)		
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	\$	
4. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions)		
5. Subtract line 4 from line 3. Enter the difference here (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions)	\$	
6. Enter here 3 percent of line 5. This is your Normal Tax. (Figure your Surtax below and enter in line 10)	\$	
7. Copy the figure you entered on line 3, above	\$	
8. Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1)		
9. Subtract line 8 from line 7. Enter the difference here. This is your Surtax Net Income	\$	
10. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 9. Enter the amount here		
11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D)	\$	
If you used the 1980 standard deduction in line 2, changed line 12, 13, and 14, and copy on line 10 the same figure you entered on line 11		
12. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	\$	
13. Enter here any income tax paid at source on tax-free covenant bond interest		
14. Add the figures on lines 12 and 13 and enter the total here		
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax	\$	

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Page 3

Do not itemize deductions if—(1) You determine your tax from the tax table on page 4, or
 (2) Your total income is \$5,000 or more and you claim the \$500 standard deduction.
 If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

Amount

Contributions

 \$

Allowable Contributions (not in excess of 15 percent of item 5, page 1)

\$

Interest

 \$

Total Interest

 \$

Total Taxes

Taxes

 \$

Total Allowable Losses (not compensated by insurance or otherwise)

 \$

 Losses from fire,
 storm, shipwreck, or
 other casualty, or
 theft.

Medical and dental expenses

Net Expenses (not compensated by insurance or otherwise)

\$

Enter 3 percent of item 5, page 1, and subtract from Net Expenses

Allowable Medical and Dental Expenses. See Instruction for limitation

 \$

Miscellaneous
(See Instructions)

Total Miscellaneous Deductions

TOTAL DEDUCTIONS

\$

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income.
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500).
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income.
4. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions).
5. Subtract line 4 from line 3. Enter the difference here. (If line 3 includes partially tax-exempt inter-

 \$

GOVERNMENT'S EXHIBIT 1-C

Your Income

Principal Employer's Name	Where Employed (City and State)

Enter total here → \$ _____

- Enter here the total amount of your dividends \$ _____
- Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation) \$ _____
- If you received any other income, give details on page 2 and enter the total here \$ 4,943 93
- Add amounts in items 2, 3, 4, and 5, and enter the total here \$ 4,943 93

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN \$4,000: You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for deductions for contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these types amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS \$4,000 OR MORE.—Use the tax table and compute your tax on page 2. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

**Tax Due
or
Refund**

7. Enter your tax from table on page 4, or from line 12, page 3..... \$ 470 00

8. How much have you paid on your 1946 income tax?

(A) By withholding from your wages..... \$ 260 00

(B) By payments on 1946 Declaration of Estimated Tax.....

Enter total here →

9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here..... \$ 210 00

10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here..... \$

Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1947 estimated tax ☐

If you filed a return for a prior year, what was the latest year?1965...

To which Collector's office was it sent? Columbus, Ohio

To which Collector's office did you pay
amount claimed in item 8 (B), above?

Is your wife (or husband) making a separate return for 1949? **NO**
If "Yes," write below: ("Yes" or "No")

If "Yes," write below:

Name of wife (or husband)

Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

.....

(Date)

(Continued on next page)

.....
(Date)

(Name of firm or employer, if any)

01.516 is a 3rd column of husband and wife. It must be signed by both.

EXHIBIT ~~SECRET~~

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File this return with Co or of Internal Revenue on or before March 15, 1947. Any balance of tax due (item 9, below) must be paid in full with return. See separate instructions for filling out return.

Page 1

1-d

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

FOR CALENDAR YEAR 1946

1946

or fiscal year beginning _____, 1946, and ending _____, 1947

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than \$100 of other wages, dividends, and interest.

Name David Friedberg
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

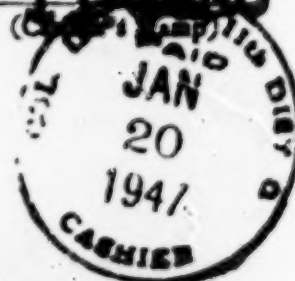
ADDRESS 1350 Neil Ave.
(PLEASE PRINT. Street and number or rural route)

Columbus, Ohio
(City or town, postal zone number) (County) (State)

Occupation _____ Social Security No. 275-03-9810

Do not write in these spaces

File Code 573
Serial No. 3001232

District 11

List your own name.

If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instruction 1) with 1946 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your Exemptions

1.	Name (please print)	Relationship	Name (please print)	Relationship
Your name	David Friedberg	XXXXXXXXXX		
	Francis "	wife		
	Elaine "	daughter		
	Wayne	son		

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1946, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues,

insurance, and other deductions of armed forces and persons claiming traveling or subsistence allowances in item 2.

Your Income

2.	Print Employer's Name	Where Employed (City and State)

Enter total here → \$ _____

3. Enter here the total amount of your dividends. _____
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation). _____
5. If you received any other income, give details on page 2 and enter the total here. 4,943 93
6. Add amounts in items 2, 3, 4, and 5, and enter the total here. \$ 4,943 93

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN \$4,000.—You may figure your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 2.

IF YOUR INCOME WAS \$4,000 OR MORE.—Disregard the tax table and compute your tax on page 2. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

7. Enter your tax from table on page 4, or from line 12, page 3. 470 00
8. How much have you paid on your 1946 income tax?
(A) By withholding from your wages. 260 00
(B) By payments on 1946 Declaration of Estimated Tax. _____
- Enter total here → 260 00

Tax Due or Refund

GOVERNMENT'S EXHIBIT 1-D

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in) \$	4. Total amount received this year \$
2. Amount received tax-free in prior years	5. Excess, if any, of line 4 over line 3
3. Remainder of your cost (line 1 less line 2)	6. Enter line 5, or 3 percent of line 1, whichever is greater (Attach separate schedule for each additional annuity or pension)

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (explain in Schedule G)
	\$	\$	\$	\$
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	\$	\$	\$	\$

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)(State (1) nature of business Tailoring (2) business name Buckeye Tailoring Co.)

1. Total receipts	\$58,782 36
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "I" or "F" or "M" on lines 2 and 3 if inventories are valued at either cost, or cost or market, whichever is lower)	
2. Inventory at beginning of year	\$ 5,102 00
3. Merchandise bought for sale	18,623 87
4. Labor	23,653 83
5. Material and supplies	1,316 61
6. Other costs (explain in Schedule G)	
7. Total of lines 2 to 6	\$ 48,886 31
8. Less inventory at end of year	6,863 00
9. Net cost of goods sold (line 7 less line 8)	\$ 42,023 31
10. Gross profit (line 1 less line 9)	\$ 16,759 05
OTHER BUSINESS DEDUCTIONS	
11. Salaries and wages not in line 4	\$ 6,296 23
12. Interest on business indebtedness	
13. Taxes on business and business property	1,511 52
14. Losses (explain in Schedule G)	111 06
15. Bad debts arising from sales or services	355 51
16. Depreciation, obsolescence and depletion (explain in Schedule F)	
17. Rent, repairs, and other expenses (explain in Schedule G)	3,490 77
18. Amortization of emergency facilities (attach statement)	
19. Net operating loss deduction (attach statement)	
20. Total of lines 11 to 19	\$ 11,815 12
21. Total of lines 9 and 20	\$ 53,838 43
22. Net profit (or loss) (line 1 less line 21)	4,943 93

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc.	Amount, \$
2. Name and address of estate or trust	Amount, \$
3. Other sources (state nature)	Amount, \$
4. Total	

Total income from above sources (Enter as item 5, page 1)

\$

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or otherwise) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

Do not deduct item 10—(1) You determine your tax from the tax table on page 4, or
 (2) Your total income is \$5,000 or more and you claim the \$500 standard deduction.
 If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1041, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

Amount

Contributions

\$

Allowable Contributions (not in excess of 15 percent of item 6, page 1)

\$

Interest

\$

Total Interest

Taxes

\$

Total Taxes

Losses from fire,
 storm, shipwreck, or
 other casualty, or theft.

\$

Total Allowable Losses (not compensated by insurance or otherwise)

Medical and dental
 expenses

\$

Net Expenses (not compensated by insurance or otherwise)

\$

Enter 5 percent of item 6, page 1, and subtract from Net Expenses

Allowable Medical and Dental Expenses. See instruction for limitation

Miscellaneous
 (See instructions)

\$

Total Miscellaneous Deductions

TOTAL DEDUCTIONS

\$

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income
4. Enter your exemptions (\$500 for each person whose name is listed in item 1, page 1)
5. Subtract line 4 from line 3. Enter the difference here

4. Total 523,50	24,070	24	10. Depreciation and depletion (explain in Schedule F)		
5. Material and supplies	1,790	22	17. Rent, repairs, and other expenses (explain in Schedule C)	6,849	26
6. Other costs (explain in Schedule C)			18. Amortization of emergency facilities (attach statement)		
7. Total of lines 2 to 6	51,948	36	19. Net operating loss deduction (attach statement)		
8. Less inventory at end of year	3,691	06	20. Total of lines 11 to 19	12,838	36
9. Net cost of goods sold (line 7 less line 8)	46,257	30	21. Total of lines 9 and 20	59,095	86
10. Gross profit (line 1 less line 9)			22. Net profit (or loss) (line 1 less line 21)		2,735

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

Name and address of partnership, syndicate, etc.	Amount, \$
Name and address of estate or trust	Amount, \$
Other sources (state nature)	Amount, \$
Total	

Total income from above sources (Enter as item 4, page 1) \$

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column 4 of Schedule B	2. Explanation	3. Amount	4. Column 5 of Schedule B	5. Explanation	6. Amount
17	Sample Lines	3,700 00	17	Sales Refunds	215 82
17	Insurance	125 00	17	Bank Service	46 87
17	Advertising	742 00			6,849 86
17	Heat, Light & Tel.	520 22			
17	Rent	1,500 00			

taxpayer (or taxpayers, for the taxable year ended 1948 under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1949, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

Handwritten signature
Taxpayer.¹

[SEAL²]

By

George J. Schoeneman
Commissioner of Internal Revenue.

By

YFB

1-7-48

(Date)

¹This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

²If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

1. Total receipts		\$58,782 36	
COST OF GOODS SOLD			
(To be used where inventories are an income-determining factor.) (Enter the letters L, or F, or M on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower.)			
2. Inventory at beginning of year	\$	5,102 00	
3. Merchandise bought for sale		18,623 87	
4. Labor		23,653 83	
5. Material and supplies		2,306 62	
6. Other costs (explain in Schedule G)			
7. Total of lines 2 to 6	\$	48,886 32	
8. Less inventory at end of year		6,863 00	
9. Net cost of goods sold (line 7 less line 8)	\$	42,023 32	
10. Gross profit (line 1 less line 9)	\$		
OTHER BUSINESS DEDUCTIONS			
11. Salaries and wages not in line 4	\$	6,296 23	
12. Interest on business indebtedness			
13. Taxes on business and business property		1,511 52	
14. Losses (explain in Schedule G)		111 06	
15. Bad debts arising from sales or services		355 54	
16. Depreciation, obsolescence and depletion (explain in Schedule F)			
17. Rent, repairs, and other expenses (explain in Schedule G)		3,490 77	
18. Amortization of emergency facilities (attach statement)			
19. Net operating loss deduction (attach statement)			
20. Total of lines 11 to 19	\$	11,815 12	
21. Total of lines 9 and 20	\$	53,838 44	
22. Net profit (or loss) (line 1 less line 21)			4,943 93

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc.	Amount, \$
2. Name and address of estate or trust	Amount, \$
3. Other sources (state nature)	Amount, \$
4. Total	

Total income from above sources (Enter as item 5, page 1)

\$

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES D AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 4, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
17	Light, Heat & Power	\$ 324 48		Bank service	\$ 57 32
	Advertising Expense	425 07		Insurance	467 96
	Advertising	107 08		Total	3,490 77
	Telephone	458 86			
	Rent	1,650 00			

Taxes

Total Taxes

Losses from fire,
storm, shipwreck, or
other casualty, or
theft

Total Allowable Losses (not compensated by insurance or otherwise)

Medical and dental
expenses

Net Expenses (not compensated by insurance or otherwise)

Enter 5 percent of item 6, page 1, and subtract from Net Expenses

Allowable Medical and Dental Expenses. See instruction for limitation

Miscellaneous
(See instructions)

Total Miscellaneous Deductions

TOTAL DEDUCTIONS**TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4**

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income
4. Enter your exemptions (\$500 for each person whose name is listed in item 1, page 1)
5. Subtract line 4 from line 3. Enter the difference here
6. Use the tax rates in instruction sheet to figure your combined tentative normal tax and surtax on amount entered on line 5. Enter the tentative tax here. (If line 5 above includes partially tax-exempt interest, see Tax Computation Instructions)
7. Enter here 5 percent of amount entered on line 6
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax. (If alternative tax computation is made on separate Schedule D, enter here tax from line 12 of Schedule D)

IF YOU USED THE **500** STANDARD DEDUCTION IN LINE 2, SUBTRACT LINES 4, 10, AND 11, AND COPY ON LINE 12
THE SAME FIGURE YOU ENTERED ON LINE 8.

9. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)
10. Enter here any income tax paid at source on tax-free covenant bond interest
11. Add the figures on lines 9 and 10 and enter the total here
12. Subtract line 11 from line 8. Enter the difference here and in item 7, page 1. This is your tax

680

File this return with Collector of Internal Revenue on or before March 15, 1948. Any balance of tax due (item 6, below) must be paid in full with return. See separate instructions for filling out return.

Page 1

1-e

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

FOR CALENDAR YEAR 1947

1947

or fiscal year beginning, 1947, and ending, 1948

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W 2, as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than \$100 of other wages, dividends, and interest.

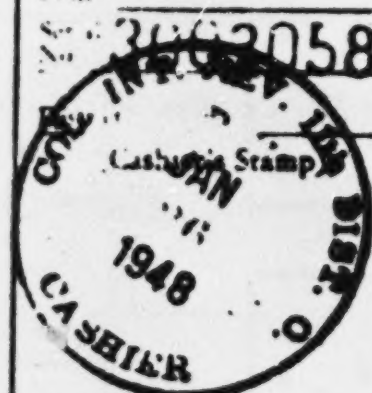
Name **David Friedberg**
(PLEASE PRINT. If this return is for husband and wife, use both first names)

ADDRESS **1350 Neil Avenue**
(PLEASE PRINT. Street and number or rural route)

Columbus, Ohio
(City or town, postal zone number) (County) (State)

Occupation Social Security No **275-03-9810**

Do not write in these spaces

File
Date

List your own name.

If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instruction 1) with 1947 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your
Exemptions

1.	Name (please print)	Relationship	Name (please print)	Relationship
Your name	David Friedberg	XXXXXXXXXX		
	Frances "	Wife		

Your
Income

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1947, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues,

insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see instruction 2.

2	Print Employer's Name	Where Employed (City and State)	Amount
			\$

Enter total here → \$

3. Enter here the total amount of your dividends.....	
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from tax).....	1,214 73
5. If you received any other income, give details on page 2 and enter the total here.	6,508 32
6. Add amounts in items 2, 3, 4, and 5, and enter the total here.....	\$ 7,723 05

GOVERNMENT'S EXHIBIT 1-E

Note

**For lower portion of this
page see next frame.**

Your
Income

Enter total here →			\$
3. Enter here the total amount of your dividends.....			
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation).....	1,214	73	
5. If you received any other income, give details on page 2 and enter the total here.	6,508	32	
6. Add amounts in items 2, 3, 4, and 5, and enter the total here.....	7,723	05	

How to
Figure
Your Tax

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table, which is provided for you, automatically allows about 10 percent of your total income for deductions for interest, taxes, casualty losses, medical expenses, and other deductions. It will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due
or
Refund

7. Enter your tax from table on page 4, or in line 12, page 3.....	\$	1,355	57
8. How much have you paid in 1947 income tax? (A) By withholding from your wages..... (B) By payment of estimated tax.....			
9. If your tax is less than the payments (item 8).....			
10. If your payments are more than your tax.....			
Check (✓) whether you are entitled to a refund: Refunded to you.....			
BALANCE OF TAX DUE here.....		\$	1,355
OVERPAYMENT here.....		\$	

If you filed a return for a prior year, what year? 1946

Is your wife making a separate return for 1947? No
(If "Yes" write below)

To which Collector's office was it sent? Columbus, Ohio

Name of wife (or husband)

To which Collector's office did you pay amount claimed in item 8 (B), above? Columbus, Ohio

Collector's office where you paid

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return)

(Date)

(Signature of taxpayer)

(Date)

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

EXHIBIT 1-E

On-attach this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Description (if annuity, state year paid on).....	\$.....	4. Total amount received this year.....	\$.....
2. Amount received this year.....	\$.....	5. Excess, if any, of line 4 over line 3.....	\$.....
3. Remainder of your cost (line 1 less line 2).....	\$.....	6. Enter line 5, or 3 percent of line 1, whichever is - (Attach separate schedule for each additional annuity or pension)	\$.....

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Expenses (explain in Schedule G)	5. Net income (rents in Schedule G)
	\$.....	\$.....	\$.....	\$.....
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5).....	\$.....	\$.....	\$.....	\$.....

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

State (1) nature of business (2) business name

(3) business address

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts.....	\$.....	OTHER BUSINESS DEDUCTIONS	
COST OF GOODS SOLD (To be used when inventories are an income-determining factor) (Enter the letters "C" or "M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)		11. Salaries and wages not in line 4.....	
2. Inventory at beginning of year.....	\$.....	12. Interest on business indebtedness.....	
3. Merchandise bought for sale.....		13. Taxes on business and business property.....	
4. Labor.....		14. Losses (explain in Schedule G).....	
5. Material and supplies.....		15. Bad debts arising from sales or services.....	
6. Other costs (explain in Schedule G).....		16. Depreciation, obsolescence and depletion (explain in Schedule F).....	
7. Total of lines 2 to 6.....	\$.....	17. Rent, repairs, and other expenses (explain in Schedule G).....	
8. Less inventory at end of year.....	\$.....	18. Amortization of emergency facilities (attach statement).....	
9. Net cost of goods sold (line 7 less line 8).....	\$.....	19. Net operating loss deduction (attach statement).....	
10. Gross profit (line 1 less line 9).....	\$.....	20. Total of lines 11 to 19.....	
		21. Total of lines 9 and 20.....	
		22. Net profit (or loss) (line 1 less line 21).....	

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from annexed Schedule D).....

1947 INCOME TAX RETURNDAVID FRIEDBERG, DSA.BUCKSTE TAILORING COMPANYINCOME

Sales

64,623.91

Cost of Goods Sold

Inventory Beginning

6,863.00

Purchased Merchandise

20,186.76

27,049.76

Inventory, End of Year

8,993.60

18,056.16

Manufacturing Expense

Labor (Net)

26,126.92

Supplies

601.85

Sponging & Drayage

379.75

Misc. Cost

941.11

Rent

3,300.00

Light, Heat & Power

348.81

Insurance

297.60

31,996.04

Gross Profit

50,052.20

14,571.71

EXPENSE

Other Salaries

6,232.63

Selling Expense

290.01

Telephone & Telegraph

562.37

Bank Charges

62.49

Taxes

915.89

Net Income

8,063.39

86,508.32

INTEREST INCOME

U. S. L. 11,000 @ 2%

189.73

Government Bonds

1,025.00

Total Income

1,214.73

87,723.05

GOVERNMENT'S EXHIBIT 1-E

4. Labor.....		(explain in Schedule F).....	
5. Material and supplies.....		17. Rent, repairs, and other expenses (explain in Schedule G).....	
6. Other costs (explain in Schedule G).....		18. Amortization of emergency facilities (attach statement).....	
7. Total of lines 2 to 6.....	\$	19. Net operating loss deduction (attach statement).....	
8. Less inventory at end of year.....		20. Total of lines 11 to 19.....	\$
9. Net cost of goods sold (line 7 less line 8).....	\$	21. Total of lines 9 and 20.....	\$
10. Gross profit (line 1 less line 9).....	\$	22. Net profit (or loss) (line 1 less line 21).....	

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D).....	
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D).....	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc.....	Amount, \$.....
2. Name and address of estate or trust.....	Amount,
3. Other sources (state nature).....	Amount,
4. Total.....	

Total income from above sources (Enter as Item 5, page 1)..... \$

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepre- ciable property)	4. Assets fully depre- ciated by end of year	5. Depreciation al- located (or allowable) to prior years	6. Remaining 1, 2 or other basis to be recovered	7. Estimated life used in calculat- ing depre- ciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
		\$			\$

RECORD

P. 683 - 702

Do not itemize deductions if: (1) You determine your tax from the tax table on page 4, or
 (2) Your total income is \$5,000 or more and you claim the \$500 standard deduction.
 If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

Amount

Contributions		\$	
		\$	
	Allowable Contributions (not in excess of 15 percent of item 6, page 1)	\$	
Interest		\$	
		\$	
	Total Interest		
Taxes		\$	
		\$	
	Total Taxes		
Losses from fire, storm, shipwreck, or other casualty, or theft.		\$	
		\$	
	Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses		\$	
	Net Expenses (not compensated by insurance or otherwise)	\$	
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses.		
	Allowable Medical and Dental Expenses. See instruction for limitation		
Miscellaneous (See instructions)		\$	
		\$	
	Total Miscellaneous Deductions		
TOTAL DEDUCTIONS		\$	

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown on item 6, page 1. This is your Adjusted Gross Income	\$ 7,723	05
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)	500	00
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	\$ 7,223	05

FORM 104
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

1-f

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF COLLECTOR OF INTERNAL REVENUE

In re: David F. Freidberg

(Name of taxpayer)

DISTRICT OF 11th OhioColumbus, Ohio

(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

F. J. Clager: Special Agent

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named
above in respect to Income

(Character of tax)

for the Years 1924 thru 1943

(Period covered)

1. TAX- ABLE PERIOD	2. LAST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED		PAID, ABATED, OR CREDITED			7. PAID AB. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
					5. DATE OR SCHEDULE NO.	6. AMOUNT			
Yr. 1924 IT	Apr 25	612030	18	01	3-14-25	18	01	pd	1281 Bryden Rd.
Yr. 1924 Amd.	May 26	200039 Int	13	12 91	5-19-26	14	03	pd	1281 Bryden Rd.
Yr. 1925 IT	Apr 26	604034	7	58	3-15-26	7	58	pd	301 Linwood Ave.
Yr. 1926 IT	NI	5132	Nontaxable						700 Kimball Place
Yr. 1927 IT	NI	1651	Nontaxable						701 Bedford Ave.
Yr. 1928 IT	No Returns filed								
Yr. 1929 IT	No Returns filed								

7
GOVERNMENT'S EXHIBIT 1-F

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate Dec. 6, 19 51

U. S. GOVERNMENT PRINTING OFFICE

16-12000

(See instructions on reverse side)

Harry J. Bussey
Collector of Internal Revenue.

(1200)

(685)

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF COLLECTOR OF INTERNAL REVENUE

In re: David F. Freidberg
(Name of taxpayer)

DISTRICT OF 11th Ohio

Columbus, Ohio
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

F. J. Clager: Special Agent

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to Income

(Character of tax)

for the Years 1924 thru 1943

(Period covered)

1. TAX- ABLE PERIOD	2. LAST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED	PAID, ABATED, OR CREDITED		7. PAID AB. CR.	8. ADJUSTMENT OF OVER-ASSESSMENTS
				5. DATE OR SCHEDULE NO.	6. AMOUNT		
Yr. 1930	NI	3655	Nontaxable				131 N. Nelson Rd.
Yr. 1931 thru Yr. 1936	No Returns filed						
Yr. 1937	NI	15788	Nontaxable				1520 Menlo Place
Yr. 1938 thru Yr. 1941	No Returns filed						
Yr. 1942	Apr 43	116615	55 00	3-17-43 7-6-43 11-27-43	13 75 13 75 27 50	pd pd Discharged	1350 Neil Ave.
Yr. 1943	Apr 44	600237	23 75	1-19-44	23 75	pd	1350 Neil Ave.
Yr. 1943 IT-OA	Jul 44	600049	4 08	7-1-44	4 08	pd	1350 Neil Ave.

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate Dec 6, 19 51

U. S. GOVERNMENT PRINTING OFFICE

16-12000

(See instructions on reverse side)

Harry J. Bussey
Collector of Internal Revenue.

GOVERNMENT'S EXHIBIT 1-F

686

FORM 1040 A
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

**OPTIONAL
UNITED STATES
INDIVIDUAL INCOME TAX RETURN**
THIS RETURN MAY BE FILED INSTEAD OF FORM 1040 BY CITIZENS
(OR RESIDENT ALIENS) REPORTING ON THE CASH BASIS IF
GROSS INCOME IS NOT MORE THAN \$3,000 AND IS ONLY
FROM SALARY, WAGES, DIVIDENDS, INTEREST,
AND ANNUITIES

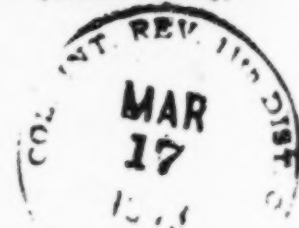
**CALENDAR YEAR
1942**

Do not write in these spaces

No. **116615**

Amount **13.75**

(Cashier's Stamp)



PRINT NAME AND HOME OR RESIDENTIAL ADDRESS PLAINLY BELOW

DAVID FRIEDBERG

(Name) (Use given names of both husband and wife, if filers a joint return)

1350 NIEL AV

(Street and number, or rural route)

COLUMBUS, OHIO

(Post office)

(County)

(State)

Occupation **SALESMAN** Social Security Number, if any **275-03-9810**
Name and address of employer **BUCKEYE TIG. CO.**

(If you had more than one employer, attach statement showing names and addresses and amounts received from each)

Check ☒ M. O.

DEPENDENTS ON JULY 1, 1942

List persons (other than husband or wife) deriving their chief support from you if they are under 18 years of age or if they are mentally or physically incapable of self-support

NAME OF DEPENDENT	RELATIONSHIP	IF 18 YEARS OF AGE OR OVER, GIVE REASON FOR LISTING
ELAINE	DAUGHTER	16
WAYNE	SON	

GROSS INCOME LESS ALLOWANCE FOR DEPENDENTS

1. Salary, wages, and compensation for personal services	\$2400.00
2. Dividends, interest, and annuities	\$2400.00
3. Total	\$4800.00
4. Less: \$385 for each dependent. (If you are the head of a family (see definition under item 6 on other side) only because of dependent(s) listed above, \$385 for each listed dependent except one.)	\$770.00
5. INCOME SUBJECT TO TAX	\$1630.00
TAX	\$55.00
6. Tax on item 5 (from Column A, B, or C of table on other side)	

I/we declare, under the penalties of perjury, that this return has been examined by me/us, and, to the best of my/our knowledge and belief, is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and regulations issued under authority thereof; and that I/we had no income from sources other than stated herein.

March 15, 1943.
(Date)

David Friedberg
(Signature)

(If this return includes gross income of both husband and wife, it must be signed by both)

Filing requirement.—An income tax return must be filed by single persons having a gross income (item 3 above) of \$200 or more and married persons having a gross income either separately or combined of \$400 or more.

Military and naval personnel.—Members of the military or naval

\$3,000, except that in the case of a husband and wife living together at any time during the calendar year separate returns may not be made on this form unless each elects to use this form.

Allowance for dependents.—Allowance of \$385 for each dependent is applicable when this form is used. Where Form 1040 is used, the

GOVERNMENT'S EXHIBIT 1-G

INDICATE YOUR STATUS ON JULY 1, 1942, BY PLACING CHECK MARK (✓) IN THE APPLICABLE BLOCK (□) BELOW

1. Single (and not head of family) on July 1, 1942. □

2. Married and not living with husband or wife (and not head of family) on July 1, 1942. □

IF YOU CHECKED No. 1 OR No. 2 ABOVE, FIND YOUR TAX IN COLUMN A

3. Married and living with husband or wife on July 1, 1942, but each filing separate returns on this form. □

IF YOU CHECKED No. 3 ABOVE, FIND YOUR TAX IN COLUMN B

4. Married and living with husband or wife on July 1, 1942, and spouse had no gross income for the entire year. ☒

5. Married and living with husband or wife on July 1, 1942, and this return includes gross income of both husband and wife for the entire year. □

6. Head of family (a single person or married person not living with husband or wife who exercises family control and supports closely connected dependent relative(s) in one household) on July 1, 1942. □
(State number of such dependent relatives)

IF YOU CHECKED No. 4, 5, OR 6 ABOVE, FIND YOUR TAX IN COLUMN C

IF Income subject to tax (Item 5 on other side) is		COLUMN A	COLUMN B	COLUMN C	IF Income subject to tax (Item 5 on other side) is		COLUMN A	COLUMN B	COLUMN C	IF Income subject to tax (Item 5 on other side) is		COLUMN A	COLUMN B	COLUMN C
Over	But not over	Your tax is	Your tax is	Your tax is	Over	But not over	Your tax is	Your tax is	Your tax is	Over	But not over	Your tax is	Your tax is	Your tax is
80	8525	80	80	80	81,350	81,375	8141	8122	810	82,175	82,200	8288	8264	8100
825	8550	1	0	0	1,375	1,400	145	126	14	2,200	2,225	288	269	155
850	8575	4	0	0	1,400	1,425	149	130	17	2,225	2,250	292	273	159
875	8600	7	0	0	1,425	1,450	154	135	21	2,250	2,275	296	277	163
900	8625	12	0	0	1,450	1,475	158	139	25	2,275	2,300	301	282	168
925	8650	15	0	0	1,475	1,500	162	143	29	2,300	2,325	305	286	172
950	8675	20	3	0	1,500	1,525	167	148	34	2,325	2,350	309	290	176
975	8700	24	6	0	1,525	1,550	171	152	38	2,350	2,375	314	295	181
1000	8725	28	9	0	1,550	1,575	175	156	42	2,375	2,400	318	299	185
1025	8750	33	14	0	1,575	1,600	180	161	47	2,400	2,425	322	303	189
1050	8775	37	18	0	1,600	1,625	184	165	51	2,425	2,450	327	308	194
1075	8800	41	22	0	1,625	1,650	188	169	55	2,450	2,475	331	312	198
1100	8825	46	27	0	1,650	1,675	193	174	60	2,475	2,500	335	316	202
1125	8850	50	31	0	1,675	1,700	197	178	64	2,500	2,525	340	321	207
1150	8875	54	35	0	1,700	1,725	201	182	68	2,525	2,550	344	325	211
1175	8900	59	40	0	1,725	1,750	206	187	73	2,550	2,575	348	329	215
1200	8925	63	44	0	1,750	1,775	210	191	77	2,575	2,600	353	334	220
1225	8950	67	48	0	1,775	1,800	214	195	81	2,600	2,625	357	338	224
1250	8975	71	52	0	1,800	1,825	218	199	85	2,625	2,650	361	342	228
1275	1,0000	76	57	0	1,825	1,850	223	204	90	2,650	2,675	366	347	233
1300	1,0025	80	61	0	1,850	1,875	227	208	94	2,675	2,700	371	351	237
1325	1,0050	84	65	0	1,875	1,900	231	212	98	2,700	2,725	376	355	241
1350	1,0075	89	70	0	1,900	1,925	236	217	103	2,725	2,750	381	359	245
1375	1,0100	93	74	0	1,925	1,950	240	221	107	2,750	2,775	386	364	250
1400	1,125	97	78	0	1,950	1,975	244	225	111	2,775	2,800	391	369	254
1425	1,150	102	83	0	1,975	2,000	249	230	116	2,800	2,825	396	374	258
1450	1,175	106	87	0	2,000	2,025	254	234	120	2,825	2,850	401	379	263
1475	1,200	110	91	0	2,025	2,050	257	238	124	2,850	2,875	406	384	267
1500	1,225	115	96	0	2,050	2,075	262	243	129	2,875	2,900	411	389	271
1525	1,250	119	100	0	2,075	2,100	266	247	133	2,900	2,925	416	394	276

IF Income subject to tax (from 1 on other side) is		COLUMN A	COLUMN B	COLUMN C	IF Income subject to tax (from 1 on other side) is		COLUMN A	COLUMN B	COLUMN C	IF Income subject to tax (from 1 on other side) is		COLUMN A	COLUMN B	COLUMN C
Over	But not over	Your tax is	Your tax is	Your tax is	Over	But not over	Your tax is	Your tax is	Your tax is	Over	But not over	Your tax is	Your tax is	Your tax is
80	8525	80	80	80	81,350	81,375	8141	8122	810	82,175	82,200	8283	8264	8150
825	850	1	0	0	1,375	1,400	145	126	14	2,200	2,225	288	269	155
850	875	4	0	0	1,400	1,425	149	130	17	2,225	2,250	292	273	159
875	900	7	0	0	1,425	1,450	154	135	21	2,250	2,275	296	277	163
900	925	11	0	0	1,450	1,475	158	139	25	2,275	2,300	301	282	168
925	950	15	0	0	1,475	1,500	162	143	29	2,300	2,325	305	286	172
950	975	20	3	0	1,500	1,525	167	148	34	2,325	2,350	309	290	176
975	1,000	24	6	0	1,525	1,550	171	152	38	2,350	2,375	314	295	181
1,000	1,025	28	9	0	1,550	1,575	175	156	42	2,375	2,400	318	299	185
1,025	1,050	33	14	0	1,575	1,600	180	161	47	2,400	2,425	322	303	189
1,050	1,075	37	18	0	1,600	1,625	184	165	51	2,425	2,450	327	308	194
1,075	1,100	41	22	0	1,625	1,650	188	169	55	2,450	2,475	331	312	198
1,100	1,125	46	27	0	1,650	1,675	193	174	60	2,475	2,500	335	316	202
1,125	1,150	50	31	0	1,675	1,700	197	178	64	2,500	2,525	340	321	207
1,150	1,175	54	35	0	1,700	1,725	201	182	68	2,525	2,550	344	325	211
1,175	1,200	59	40	0	1,725	1,750	206	187	73	2,550	2,575	348	329	215
1,200	1,225	63	44	0	1,750	1,775	210	191	77	2,575	2,600	353	334	220
1,225	1,250	67	48	0	1,775	1,800	214	195	81	2,600	2,625	357	338	224
1,250	1,275	71	52	0	1,800	1,825	218	199	85	2,625	2,650	361	342	229
1,275	1,300	76	57	0	1,825	1,850	223	204	90	2,650	2,675	366	347	233
1,300	1,325	80	61	0	1,850	1,875	227	208	94	2,675	2,700	371	351	237
1,325	1,350	84	65	0	1,875	1,900	231	212	98	2,700	2,725	376	355	241
1,350	1,375	89	70	0	1,900	1,925	236	217	103	2,725	2,750	381	359	245
1,375	1,400	93	74	0	1,925	1,950	240	221	107	2,750	2,775	386	364	250
1,400	1,425	97	78	0	1,950	1,975	244	225	111	2,775	2,800	391	369	254
1,425	1,450	102	83	0	1,975	2,000	249	230	116	2,800	2,825	396	374	258
1,450	1,475	106	87	0	2,000	2,025	253	234	120	2,825	2,850	401	379	263
1,475	1,500	110	91	0	2,025	2,050	257	238	124	2,850	2,875	406	384	267
1,500	1,525	115	96	0	2,050	2,075	262	243	129	2,875	2,900	411	389	271
1,525	1,550	119	100	0	2,075	2,100	266	247	133	2,900	2,925	416	394	276
1,550	1,575	123	104	0	2,100	2,125	270	251	137	2,925	2,950	421	399	280
1,575	1,600	128	109	1	2,125	2,150	275	256	142	2,950	2,975	426	404	284
1,600	1,625	132	113	4	2,150	2,175	279	260	146	2,975	3,000	431	409	289
1,625	1,650	136	117	7										

The income to be reported in this return is gross income (not including income which is wholly exempt from income tax) without any deductions. The taxes in the above table make allowance for personal exemption, earned income credit, and deductions aggregating 6 percent of gross income.

688

READ THIS FIRST: You probably have paid a substantial part of your 1943 tax bill through withholding or directly to the government. You may have underpaid or overpaid. File this form. It tells you and your government whether you owe any more, or are entitled to any refund.

Summary Dept., Internal Revenue Service
FORM 1040 A

OPTIONAL U. S. INDIVIDUAL INCOME AND VICTORY TAX RETURN - CALENDAR YEAR 1943

[This form may be used instead of Form 1040 if gross income is not more than \$3,000 and is only from the sources stated in items 1 and 2 below.]

NAME David Friedberg
Please print. If this return is for a husband and wife, use both first names.
 ADDRESS 1350 Nell Ave. State Ohio
Print street and number or rural route City or town State
 OCCUPATION Salesman Social Security No. (if any) 275-03-9810

Do not write in these spaces

Serial No.

600007

Amount paid, \$

(Check if enough)



Cash—Check—M. O.

Your
Income

1. Enter the TOTAL amount, before deductions for taxes, dues, insurance, bonds, etc., that you received in 1943 as salary, wages, bonuses, commissions, etc. (Members of armed forces read instruction 6)

List Employer's Name City and State
Buckeye Tailoring Co 180 S. 3rd Street

Total

Amount	
\$ 2587	00
2587	00

2. Enter here any amounts you received in 1943 in dividends, interest, and annuities.

3. Now add items 1 and 2 to get your TOTAL INCOME and enter it here.

4. List the persons—other than wife or husband—who on July 1, 1943, obtained their chief support from you if they were not yet 18, or were mentally or physically unable to support themselves.

Name of Dependents	Relationship	If 18 years or over, give reason for listing
Wayne	Son	
Klaine	Daughter	

You are allowed a credit of \$385 for each dependent. However, if you are not a married person living with wife or husband, you may nevertheless be the head of a family as defined in No. 6 on the other side of the form. If you are the head of a family only because of the dependents you listed above, allow \$385 for each listed dependent except one. Enter total dependency credit here.

5. Subtract item 4 from item 3. Enter the difference here. (If item 4 is blank)

770.00
1817 00

6. Turn over this form and check the box at the top which applies to you. Then, using the figure you entered in item 5, find your income tax in the table on the other side of the form.

7. In the space on the back of this form, figure your Victory tax on item 3. Enter the tax here.

8. Now add items 6 and 7. Enter the total here.

9. If you filed a tax return on 1942 income, enter the amount of the refund here. However, before entering anything, read carefully instruction 4.

10. Enter item 8 or item 9, whichever is larger.

11. FORGIVENESS FEATURE. Don't fill in A, B, and C below if neither item 8 or 9 is \$50 or less.

A Enter item 8 or 9, whichever is smaller

25 00

B Take three-fourths of A above. Enter this amount or \$50, whichever is larger. This is the forgiven part of the tax.

41 80

C Subtract B from A. This is the unforgiven part of the tax. Enter it here.

13 75

12. Add item 10 to the amount in item 11C, if any. Enter the total here. This is your total income and Victory tax.

153 75

140 75

13. A Enter here your income and Victory taxes withheld by your employer

27 50

B Enter here the total sums you paid last year on your 1942 income tax bill

27 50

Your
Tax Bill
and
Forgiveness

What You've

GOVERNMENT'S EXHIBIT 1-H

X

1

X

X

First street and number or rural route (City or town) State
 OCCUPATION Salesman Social Security No. (if any) 27 5-03-9810 Cash-Check-M.O.

GOVERNMENT'S EXHIBIT 1-H

Your Income

1. Enter the TOTAL amount, before deductions for taxes, dues, insurance, bonds, etc., that you received in 1943 as salary, wages, bonuses, commissions, etc. (Members of armed forces read instruction 6)

Last Employer's Name Buckeye Tailoring Co City and State 180 S. 3rd Street

Amount
 \$ 2587 00

2587 00

Total

2. Enter here any amounts you received in 1943 in dividends, interest, and annuities
 3. Now add items 1 and 2 to get your TOTAL INCOME and enter it here.

Your Credit for Dependents

4. List the persons—other than wife or husband—who on July 1, 1943, obtained their chief support from you if they were not yet 18, or were mentally or physically unable to support themselves.

Name of Dependent	Relationship	If 18 years or over, give reason for listing
Wayne	Son	
Klaine	Daughter	

You are allowed a credit of \$385 for each dependent. However, if you are not a married person living with wife or husband, you may nevertheless be the head of a family as defined in Nu. 6 on the other side of the form if you are the head of a family only because of the dependents you listed above, allow \$385 for each listed dependent except one. Enter total dependency credit here.

770.00

1817 00

5. Subtract item 4 from item 3. Enter the difference here (Enter item 3 if item 4 is blank)

86 00

50 88

136 80

55 00

135 00

Your Tax Bill and Forgiveness

6. Turn over this form and check the box at the top which applies to you. Then, using the figure you entered in item 5, find your income tax in the table. Enter the amount here.

7. In the space on the back of this form, figure your Victory tax on item 3. Enter the tax here.

8. Now add items 6 and 7. Enter the total here.

9. If you filed a tax return on 1942 income, enter the amount of tax here. However, before entering anything, read carefully instruction 4.

10. Enter item 8 or item 9, whichever is larger.

11. FORGIVENESS FEATURE. Don't fill in A, B, and C below if either item 8 or 9 is \$10 or less.

- A Enter item 8 or 9, whichever is smaller 25 00

- B Take three-fourths of A above. Enter this amount or \$50, whichever is larger. This is the forgiven part of the tax. 41 80

- C Subtract B from A. This is the unforgiven part of the tax. Enter it here. 13 75

13 75

12. Add item 10 to the amount in item 11C, if any. Enter the total here. This is your total income and Victory tax.

153 75

140 75

What You've Paid and What You Owe

13. A Enter here your income and Victory taxes withheld by your employer 27 60

- B Enter here the total sums you paid last year on your 1942 income tax bill 27 60

- C Enter here any 1943 income tax payments last September and December

- D Now add the figures in A, B and C and enter the total here.

125 00

14. If the tax in item 12 is more than the total payments in item 13, you owe the difference. Enter it here. If the payments are greater, write "NONE" and skip items 15 and 16.

28 75

23 75

Terms of Payment or Refund

15. You may postpone, until not later than March 15, 1945, payment of the amount you owe up to one half of item 11C. Enter the postponed amount here.

16. Enter the amount you are paying with this return (subtract item 15 from item 14).

17. If the TOTAL of your 1943 payments (item 13) is larger than your tax (item 12), enter the difference. You have overpaid your 1943 tax by this amount.

23 75

Check (✓) what you want done: Refund it to me ☐ Credit it on my 1944 estimated tax ☒

I declare under the penalties of perjury that this return has been examined by me, and to the best of my knowledge and belief it is true and correct.

Date 1/15/44 (Signature) [Signature]

EXHIBIT

Check your family status in the proper box below before you use the table to find your income tax.

1. Single (and not head of family) on July 1, 1943 ☐ **A**
 2. Married but not living with wife or husband (and not head of family) on July 1, 1943 ☐ **A**
 If you checked No. 1 or No. 2 above, find your tax in column A of the table below

3. Married and living with wife or husband on July 1, 1943, but each filing separate returns on this form ☐ **B**
 If you checked No. 3 above, find your tax in column B of the table below

4. Married and living with wife or husband on July 1, 1943, and only one had gross income during the year ☐
 5. Married and living with wife or husband on July 1, 1943, and this return includes gross income of both wife and husband for the entire year ☐
 6. Others who are head of family (a single person or married person not living with wife and husband who exercises family control and supports closely connected dependent relative(s) in one household) on July 1, 1943 ☐
 (State number of such dependent relatives _____)
C
 If you checked No. 4, 5, or 6 above, find your tax in column C of the table below

Now read down to where the figure you entered in item 5 falls, and then across to your column. Enter the tax you find there as item 6 on the other side.

If Income subject to tax (item 5 on other side) is		COLUMN A	COLUMN B	COLUMN C
OVER	But not over	Your TAX is	Your TAX is	Your TAX is
90	\$5.25	90	90	90
525	550	1	0	0
550	575	4	0	0
575	600	7	0	0
600	625	11	0	0
625	650	15	0	0
650	675	20	3	0
675	700	24	6	0
700	725	28	9	0
725	750	33	14	0
750	775	37	18	0
775	800	41	22	0
800	825	46	27	0
825	850	50	31	0
850	875	54	35	0
875	900	59	40	0
900	925	63	44	0
925	950	67	48	0
950	975	71	52	0
975	1,000	76	57	0
1,000	1,025	80	61	0
1,025	1,050	84	65	0
1,050	1,075	89	70	0
1,075	1,100	93	74	0
1,100	1,125	97	78	0
1,125	1,150	102	83	0
1,150	1,175	106	87	0
1,175	1,200	110	91	0
1,200	1,225	115	96	0
1,225	1,250	119	100	0
1,250	1,275	123	104	0
1,275	1,300	128	109	1
1,300	1,325	132	113	4
1,325	1,350	136	117	7

If Income subject to tax (item 5 on other side) is		COLUMN A	COLUMN B	COLUMN C
OVER	But not over	Your TAX is	Your TAX is	Your TAX is
\$1,350	\$1,375	141	122	110
1,375	1,400	145	126	114
1,400	1,425	149	130	117
1,425	1,450	154	135	121
1,450	1,475	158	139	125
1,475	1,500	162	143	129
1,500	1,525	167	148	134
1,525	1,550	171	152	138
1,550	1,575	175	156	142
1,575	1,600	180	161	147
1,600	1,625	184	165	151
1,625	1,650	188	169	155
1,650	1,675	193	174	160
1,675	1,700	197	178	164
1,700	1,725	201	182	168
1,725	1,750	206	187	173
1,750	1,775	210	191	177
1,775	1,800	214	195	181
1,800	1,825	218	199	185
1,825	1,850	223	204	190
1,850	1,875	227	208	194
1,875	1,900	231	212	198
1,900	1,925	236	217	203
1,925	1,950	240	221	207
1,950	1,975	244	225	211
1,975	2,000	249	230	216
2,000	2,025	253	234	220
2,025	2,050	257	238	224
2,050	2,075	262	243	229
2,075	2,100	266	247	233
2,100	2,125	270	251	237
2,125	2,150	275	254	241
2,150	2,175	279	258	245

If Income subject to tax (item 5 on other side) is		COLUMN A	COLUMN B	COLUMN C
OVER	But not over	Your TAX is	Your TAX is	Your TAX is
\$2,175	\$2,200	283	264	250
2,200	2,225	288	269	255
2,225	2,250	292	273	259
2,250	2,275	296	277	263
2,275	2,300	301	282	268
2,300	2,325	305	286	272
2,325	2,350	309	290	276
2,350	2,375	314	295	281
2,375	2,400	318	299	285
2,400	2,425	322	303	289
2,425	2,450	327	308	294
2,450	2,475	331	312	298
2,475	2,500	335	316	302
2,500	2,525	340	321	307
2,525	2,550	344	325	311
2,550	2,575	348	329	315
2,575	2,600	353	334	320
2,600	2,625	357	338	324
2,625	2,650	361	342	328
2,650	2,675	366	347	333
2,675	2,700	371	351	337
2,700	2,725	376	355	341
2,725	2,750	381	359	345
2,750	2,775	386	364	350
2,775	2,800	391	369	354
2,800	2,825	396	374	358
2,825	2,850	401	379	363
2,850	2,875	406	384	367
2,875	2,900	411	389	371
2,900	2,925	416	394	376
2,925	2,950	421	399	380
2,950	2,975	426	404	384
2,975	3,000	431	409	389

GOVERNMENT'S EXHIBIT 1-H

(From 3 on other side) is					(From 3 on other side) is					(From 3 on other side) is				
OVER	But not over	Your TAX is	TAX is	TAX is	OVER	But not over	Your TAX is	TAX is	TAX is	OVER	But not over	Your TAX is	TAX is	TAX is
\$0	\$525	\$0	\$0	\$0	\$1,350	\$1,375	\$141	\$122	\$10	\$2,175	\$2,200	\$283	\$254	\$150
525	550	1	0	0	1,375	1,400	145	126	14	2,200	2,225	288	269	155
550	575	4	0	0	1,400	1,425	149	130	17	2,225	2,250	293	273	159
575	600	7	0	0	1,425	1,450	154	135	21	2,250	2,275	296	277	163
600	625	11	0	0	1,450	1,475	158	139	25	2,275	2,300	301	282	168
625	650	15	0	0	1,475	1,500	162	143	29	2,300	2,325	305	286	172
650	675	20	3	0	1,500	1,525	167	148	34	2,325	2,350	309	290	176
675	700	24	6	0	1,525	1,550	171	152	38	2,350	2,375	314	295	181
700	725	28	9	0	1,550	1,575	175	156	42	2,375	2,400	318	299	185
725	750	33	14	0	1,575	1,600	180	161	47	2,400	2,425	322	303	189
750	775	37	18	0	1,600	1,625	184	165	51	2,425	2,450	327	308	194
775	800	41	22	0	1,625	1,650	188	169	55	2,450	2,475	331	312	198
800	825	46	27	0	1,650	1,675	193	174	60	2,475	2,500	335	316	202
825	850	50	31	0	1,675	1,700	197	178	64	2,500	2,525	340	321	207
850	875	54	35	0	1,700	1,725	201	182	68	2,525	2,550	344	325	211
875	900	59	40	0	1,725	1,750	206	187	73	2,550	2,575	348	329	215
900	925	63	44	0	1,750	1,775	210	191	77	2,575	2,600	353	334	220
925	950	67	48	0	1,775	1,800	214	195	81	2,600	2,625	357	338	224
950	975	71	52	0	1,800	1,825	218	199	85	2,625	2,650	361	342	228
975	1,000	76	57	0	1,825	1,850	223	204	90	2,650	2,675	366	347	233
1,000	1,025	80	61	0	1,850	1,875	227	208	94	2,675	2,700	371	351	237
1,025	1,050	84	65	0	1,875	1,900	231	212	98	2,700	2,725	376	355	241
1,050	1,075	89	70	0	1,900	1,925	236	217	103	2,725	2,750	381	359	245
1,075	1,100	93	74	0	1,925	1,950	240	221	107	2,750	2,775	386	364	250
1,100	1,125	97	78	0	1,950	1,975	244	225	111	2,775	2,800	391	369	254
1,125	1,150	102	83	0	1,975	2,000	249	230	116	2,800	2,825	396	374	258
1,150	1,175	106	87	0	2,000	2,025	253	234	120	2,825	2,850	401	379	263
1,175	1,200	110	91	0	2,025	2,050	257	238	124	2,850	2,875	406	384	267
1,200	1,225	115	96	0	2,050	2,075	262	243	129	2,875	2,900	411	389	271
1,225	1,250	119	100	0	2,075	2,100	266	247	133	2,900	2,925	416	394	276
1,250	1,275	123	104	0	2,100	2,125	270	251	137	2,925	2,950	421	399	280
1,275	1,300	128	109	1	2,125	2,150	275	254	141	2,950	2,975	426	404	284
1,300	1,325	132	113	4	2,150	2,175	279	258	145	2,975	3,000	431	409	289
1,325	1,350	136	117	7										

Figure
Your
Victory
Tax
In This
Space

- a) Copy here the figure you entered in item 3 on the other side of this form. 2587.00
- b) If you checked No. 1, 2, 3, 4 or 6 at the top of this page, enter \$624. or
If you checked No. 5, and both you and your wife or husband each had income of more than \$624, enter \$1248
here; but, if either of you had \$624 or less, add the smaller of the two incomes to \$624 and enter the total
here as figure you enter as your Victory tax exemption. 624
- c) Now subtract the amount in line b from the amount in line a. Enter the difference here. 1963
- d) You now figure your net Victory tax. In the table below first find the percentage which applies to you and circle it. Now, multiply the amount you entered in line c by the rate you circled. Enter the result here and in item 7 on the other side. (See examples below.) This method automatically allows you your credit, which depends on whether you are married or single and how many dependents you have.
- | DEPENDENTS | None | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|------------|-------|-------|--------------|-------|-------|-------|-------|-------|-------|-------|-------|
| Single | 3.75% | 3.65% | <u>3.55%</u> | 3.45% | 3.35% | 3.25% | 3.15% | 3.05% | 2.95% | 2.85% | 2.75% |
| Married | 3.0% | 2.9% | <u>2.8%</u> | 2.7% | 2.6% | 2.5% | 2.4% | 2.3% | 2.2% | 2.1% | 2.0% |
- Those who checked No. 6 at the top of this page should use the rates for married persons in the table just above. However, count as dependents only the number for whom you claimed credit in item 4 on the other side of this form.

EXAMPLE 1 - Single, no dependents
Amount entered in line c..... \$1525
Net Victory Tax rate..... X 3.55%
(from table above)
541.38
Net Victory Tax (enter in line d) \$541.38

EXAMPLE 2 - Married, no dependents
Amount entered in line c..... \$1525
Net Victory Tax rate..... X 2.8%
(from table above)
\$427.00
Net Victory Tax (enter in line d) \$427.00

EXAMPLE 3 - Married, 2 dependents
Amount entered in line c..... \$1525
Net Victory Tax rate..... X 2.8%
(from table above)
\$427.00
Net Victory Tax (enter in line d) \$427.00

690

MAY 26 1944

David Krieger
1350 Fifth Ave
Coh. O.

Account No. 600237

Examination of your income tax return, Form #1040 for the year 1943 discloses error(s) in

Carried wrong amount forward in line 7.
for Victory Tax

Correction(s) result(s) in an increase in your tax liability as follows:

Additional Tax	<u>4.08</u>
Int. to	<u> </u>
Total	<u> </u>

Please read the accompanying letter carefully, sign and return to this office. If further explanation is desired, you may call at Room 231, New Federal Building, Columbus, Ohio.

HARRY F. BUSEY, Collector

By

[Signature]
S. F. Hoggie
Chief of Income Tax Div.

*July 6 or 7
Pd. 1-28-44*

Reviewer

[Signature]
Director

GOVERNMENT'S EXHIBIT 1-H

1206

Interest and	Total Interest		
		\$	
Taxes	Total Taxes		
		\$	
Losses from fire, storm, shipwreck, or other casualty, or theft	Total Allowable Losses (not compensated by insurance or otherwise)		
		\$	
Medical and dental expenses	Net Expenses (not compensated by insurance or otherwise)		
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses	\$	
Miscellaneous (See instructions)	Allowable Medical and Dental Expenses. See instruction for limitation		
		\$	
	Total Miscellaneous Deductions		
	TOTAL DEDUCTIONS		\$

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income	\$ 7,723	05
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions, if adjusted gross income (line 1, above) is \$3,000 or more and deductions are not itemized, enter the standard deduction of \$500)	500	00
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	\$ 7,223	05
4. Enter your exemptions (\$500 for each person whose name is listed in item 1, page 1)	1,000	00
5. Subtract line 4 from line 3. Enter the difference here	\$ 6,223	05
6. Use the tax rates in instruction sheet to figure your combined tentative normal tax and surtax on amount entered on line 5. Enter the tentative tax here. (If line 3, above, includes partially tax-exempt interest, see Tax Computation instructions)	\$ 1,426	92
7. Enter here 5 percent of amount entered on line 6, above	71	35
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax. (If alternative tax computation is made on separate Schedule D, enter here tax from line 12 of Schedule D)	\$ 1,355	57
IF YOU USED THE TEN STANDARD DEDUCTIONS ON LINE 2, ENTERED LINES 1, 2, AND 3, AND COPY ON LINE 11		
THE SAME FIGURE YOU ENTERED ON LINE 1		
9. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	\$	
10. Enter here any income tax paid at source on tax-free covenant bond interest		
11. Add the figures on lines 9 and 10 and enter the total here		
12. Subtract line 11 from line 8. Enter the difference here and in item 7, page 1. This is your tax	\$	

692 (1208)

	12-31-12	12-31-13	12-31-14	12-31-15	12-31-16	12-31-17
Brought forward - taxable net worth increase						
Add:						
Personal Expenses						
Life Insurance Premiums						
Income Tax			\$653 91	\$652 62	\$651 66	\$304 21
Rental - personal residence			293 43	715 29	(643)	219 00
Other expenses paid by check			780 00	780 00	780 00	811 00
			0	439 73	474 90	863 78
Total			\$1,626 96	\$2,507 54	\$1,899 96	\$2,105 99
Net Worth Increase and personal living expenses			\$3,614 68	\$2,269 18	\$2,353 34	\$4,776 91
Less: Standard Deduction						
Net Income			500 00	900 00	900 00	500 00
			<u>\$1,564 68</u>	<u>\$2,169 18</u>	<u>\$2,253 34</u>	<u>\$4,276 91</u>

COLUMBUS, OHIO
(Post office) (County) (State)
Occupation SALESMAN Social Security number 275-03-9810
Name and address of employer BUCKEYE TIRE CO.
(If you had more than one employer, attach statement showing name and address and amount received from each)

Check - M. O.

DEPENDENTS ON JULY 1, 1942

List persons (other than husband or wife) deriving their chief support from you if they are under 18 years of age or if they are mentally or physically incapable of self-support

NAME OF DEPENDENT	RELATIONSHIP	IF 18 YEARS OF AGE OR OVER, GIVE REASON FOR LISTING
ELAINE WAYNE	DAUGHTER	16
	SON	

GROSS INCOME LESS ALLOWANCE FOR DEPENDENTS

1. Salary, wages, and compensation for personal services	\$ 2400.00
2. Dividends, interest, and annuities	\$ 2500.00
3. Total	\$ 4900.00
4. Less: \$385 for each dependent (If you are the head of a family (see definition under item 6 on other side) only deduct \$385 for each listed dependent except one.)	\$ 770.00
5. INCOME SUBJECT TO TAX	\$ 4130.00
TAX	\$ 55.00
6. Tax on item 5 (from Column A, B, or C of table on other side)	

I/we declare, under the penalties of perjury, that this return has been examined by me/us, and, to the best of my/our knowledge and belief, is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and regulations issued under authority thereof; and that I/we had no income from sources other than stated herein.

March 15, 1943.
(Date)

David P. Kelly
(Signature)

(If this return includes gross income of both husband and wife, it must be signed by both.)

Filing requirement.—An income tax return must be filed by single persons having a gross income (Item 3 above) of \$200 or more and married persons having a gross income either separately or combined of \$400 or more.

Military and naval personnel.—Members of the military or naval forces of the United States below the grade of commissioned officer on December 31, 1942, should not include in gross income the first \$200 if single on such date, or the first \$400 if married or head of a family on such date, received as compensation for active service.

Returns of husband and wife.—Husband and wife may use this form as a joint return if they were living together on July 1, 1942, and if their combined gross income for the calendar year is not more than \$400. A separate return may be made on this form if the gross income for the calendar year of the one filing the return is not more than \$200, except that in the case of a husband and wife living together at any time during the calendar year separate returns may not be made on this form unless each elects to use this form.

Allowance for dependents.—Allowance of \$385 for each dependent is applicable when this form is used. Where Form 1040 is used, the allowance for each dependent is \$200.

Amended returns.—If a qualified taxpayer elects to use this form, amended return may not be made on Form 1040.

Filing of returns and payment of tax.—The return must be filed with the Collector of Internal Revenue for your district on or before March 15, 1943. The tax may be paid in equal quarterly installments commencing March 15, 1943. Pay tax, if any, to the Collector and if payment is made by check or money order, make payable to "Collector of Internal Revenue."

EXHIBIT 1-G

GOVERNMENT'S EXHIBIT 2-C

Nº 8070

D. F. or F. F. Handler

~~800 S. Stanwood Road~~

Columbus, Ohio

~~770 S. Cassingham Road~~

1350 Neil Ave. - Apt. J -1

8070

*Letter to
J. Clay
ad 8/20*

DEBIT	CREDIT	DIVIDEND	DATE	BALANCE
				3545.18
1500.00 -			FEB 11 41	2045.18 *
	1359.21		MAR 041	3404.39 *
104.00 -			MAR 041	3300.39 *
100.00 -			MAR 31 41	3200.39 *
200.00 -			APR 5 41	3000.39 *
	1030.00	45.00	JUN 30 41	3045.39 *
		53.55	JUL 16 41	4075.39 *
		58.55	DEC 31 41	4133.94 *
	600.00		JAN 29 42	4733.94 *
158.55 -			MAR 042	4575.39 *
216.45 -			MAR 042	4358.94 *
	241.06		MAR 11 42	4600.00 *
300.00 -			MAR 23 42	4300.00 *
500.00 -			MAR 26 42 ✓✓✓	3800.00 *
	100.00	47.92	APR 13 42 ✓✓	3900.00 *
	200.00	47.92	MAY 30 42	3947.92 *
200.00 -		47.92	JUN 25 42	4147.92 *
		49.34	JUN 30 42	3947.92 *
750.00 -			JUL 31 42	3997.26 *
	100.00		MAR 4 43	3247.26 *
	100.00		APR 12 43	3357.26 *
	200.00	41.42	MAY 15 43	3497.26 *
	100.00		JUN 14 43	3597.26 *
			JUN 30 43	3638.68 *
			JUL 16 43	3838.68 *
			DEC 13 43	3938.68 *
		55.55	JAN 12 44	4042.43 *
	2800.00	39.55	FEB 21 44	4080.98 *
		45.47	MAR 2 44	6880.98 *
750.00 -			JUN 30 44	6926.45 *
175.00 -			JUL 04 44	6176.45 *
	3900.00		JUL 28 44	6001.45 *
3900.00 -			DEC 11 44	6061.46 *
			MAR 15 45	9961.46 *
			MAY 16 45	6061.46 *
			JUN 30 45	6105.92 *
93.66 -			JUL 15 45	6013.24 *
6012.24 -			JUL 15 45	1.00 *
	200.00		JUL 7 45	201.00 *

nan

(p. 693)

1209

GOVERNMENT'S EXHIBIT 2-C

Nº 80

D. F. or F. F. Handler

~~800 S. Stanwood Road~~

Columbus, Ohio

1350 Neil Ave. - Apt. J. - 1

8070

80

DEBIT	CREDIT	DIVIDEND	DATE	FORWARD	BAL
	1000.00				
	1000.00		JUL 21 45 ✓		801.
	1000.00		JUL 21 45		1201.
	1000.00		SEP 11 45		2201.
	1000.00		SEP 21 45		3201.
	1000.00		OCT 18 45		4201.
3700.00 -		338	NOV 15 45 5		501
	350.00		DEC 17 45		851
	397.95	338	DEC 31 45		854
	600.00	6.41	JAN 18 46		1252
350.80 -			JAN 30 46		1258
	1000.00		JAN 29 46		1858
	1000.00		JUL 15 46 ✓		1508
	1000.00		JUL 27 46 ✓		2508
	500.00	2569	DEC 20 46		3508
	40.76	2569	DEC 31 46		4508
5474.99 -		40.76	JAN 1 47		5008
			JAN 1 47 -		5408
					5434

GOVERNMENT'S EXHIBIT 2-C

(A 694)
1210

No. J 8070

Date

J. F. Nandler or F. F. Nandler
(Surname) (First Name) (Middle Name)

The undersigned hereby apply for a membership and for a SAY share account in the

First Federal Savings and Loan Association of Columbus

and for the issuance of evidence of membership in the approved form in the joint names of the undersigned as joint tenants with the right of survivorship and not as tenants in common.* Receipt is hereby acknowledged of a copy of the charter and by-laws of said association. Specimens of the signatures of the undersigned are shown below and the association is hereby authorized to act without further inquiry in accordance with writings bearing any such signature; it being understood and agreed that any one of the undersigned who shall first act shall have power to act in all matters related to the membership and any share account in said association held by the undersigned, whether the other person or persons named in the certificate be living or not. The repurchase or redemption value of any such share account or other rights relating thereto may be paid or delivered in whole or in part to any one of the undersigned, who shall first act, and such payment or delivery or a receipt or acquittance signed by any one of the undersigned shall be valid and sufficient release and discharge of said association.

J. F. Nandler or F. F. Nandler
Signature Signature
208 So Starwood Rd
Address Address

Reverse side of above card.

Account No. 8070

Date

(Surname)

(First Name)

(Middle Name)

I hereby apply for a membership and a share account in the

First Federal Savings and Loan Association of Columbus

and for the issuance of evidence of membership in the approved form. Receipt is hereby acknowledged of a copy of the charter and by-laws of said association. A specimen of my signature is shown below and the association is hereby authorized to act without further inquiry in accordance with writings bearing such signature.

Signature

Street Address

City and State

J GOVERNMENT'S EXHIBIT 2-C

1211

"Payment Slips" of First Federal Savings & Loan Association as follows:

Account No.	Date	Amount "Savings Share"	Name
8070	June 24 '39	\$ 1726.34	D. F. or F. F. Handler
8070	July 12 '39	609.08	D. F. Handler
8070	Nov. 13 '39	700.42	D. F. Handler
8070	March 6 '41	1359.21	Handler
8070	July 16 '41	1030.00	Handler
8070	Jan. 29 '42	600.00	Handler
8070	March 11 '42	241.06	D. F. Handler
8070	April 13 '42	100.00	Handler
8070	June 25 '42	200.00	F. F. Handler
8070	April 12 '43	150.00	Handler
8070	May 15 '43	100.00	Handler
8070	June 11 '43	100.00	F. F. Handler
8070	July 16 '43	200.00	Handler
8070	Oct. 13 '43	100.00	Handler
8070	Nov. 12 '43	103.75	Handler
8070	June 2 '44	2800.00	Handler
8070	May 14 '45	3900.00	Handler
8070	July 7 '45	200.00	Handler
8070	July 21 '45	1000.00	Handler
8070	Sept. 11 '45	1000.00	Handler
8070	Sept. 21 '45	1000.00	Handler
8070	Oct. 18 '45	1000.00	Handler
8070	Dec. 17 '45	350.00	Handler
8070	June 18 '46	397.75	Handler
8070	June 28 '46	600.00	Handler
8070	July 27 '46	1000.00	Handler
8070	Aug. 30 '46	1000.00	Handler
8070	Nov. 2 '46	1000.00	Handler
8070	Nov. 26 '46	500.00	Handler
8070	Dec. 20 '46	400.00	Handler

GOVERNMENT'S EXHIBIT 2-C

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF COLUMBUS

COLUMBUS, OHIO JUL 27 '40 No. C 19030

PAY TO THE ORDER OF F. F. Handlen \$500.00

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION

TO THE HUNTINGTON NATIONAL BANK, COLUMBUS, OHIO. BY W. E. Edson PRESIDENT

25-2 COLUMBUS, OHIO. BY Mayant Augustan AUTHORIZED SIGNATURE

F. F. Handlen

DOUBLE H H SERVICE STATION

6-1
FEDERAL RESERVE BANK OF

PAY TO THE ORDER OF
Any Bank, or Cash
1-30 JUL 30 1940 1-30
NEW YORK
MANUFACTURERS TRUST COMPANY
300, Eighth Avenue, Brooklyn, N.Y.

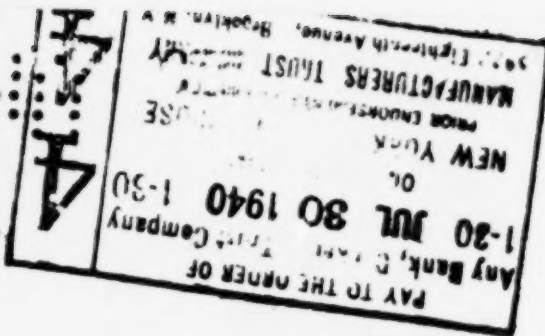
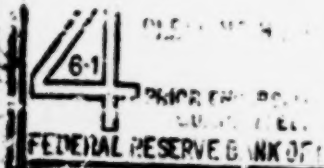
Note

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page see next frame.

GOVERNMENT'S EXHIBIT 2-C

J.F. Hand

DOUBLE H H SERVICE



ERNMENT'S EXHIBIT 2-2

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF COLUMBUS
COLUMBUS, OHIO

1911 4/ No. **C 21686**

PAY TO THE ORDER OF *F. F. Hand* \$1500 00

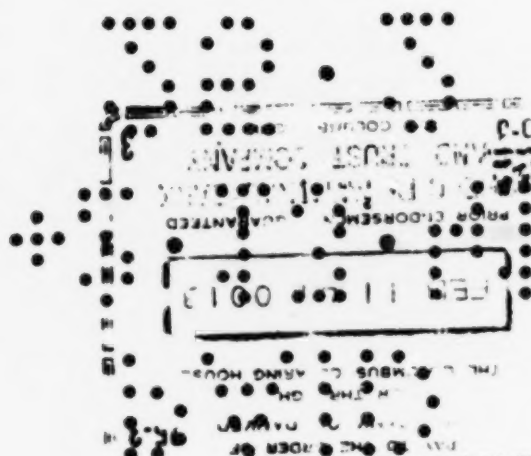
1500 00

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION

TO THE HUNTINGTON NATIONAL BANK.
25-2 COLUMBUS, OHIO.

BY *W. E. Lidson* PRESIDENT
Margaret Augustus AUTHORIZED SIGNATURE

*F. F. Hand
Handwritten by
J. F. Hand
by to connect
Repr.*



1213

J GOVERNMENT'S EXHIBIT 2-C

1212

<u>Account No.</u>	<u>Date</u>	<u>Amount</u> <u>"charged against account"</u>	<u>Name</u>
8070	Nov. 13 '39	\$ 10.67	D. F. Handler
8070	June 11 '40	60.80	D. F. Handler
9070	July 10 '40	45.75	F. F. Handler
8070	Feb. 11 '41	1500.00	F. F. Handler
8070	March 6 '41	104.00	F. F. Handler
8070	March 31 '41	100.00	D. F. Handler
8070	April 5 '41	200.00	D. F. Handler
8070	March 6 '42	158.55	F. F. Handler
8070	March 6 '42	216.45	F. F. Handler
8070	March 23 '42	300.00	F. F. Handler
8070	March 26 '42	500.00	F. F. Handler
8070	June 30 '42	200.00	F. F. Handler
8070	March 4 '43	750.00	F. F. Handler
8070	July 6 '44	750.00	F. F. Handler
8070	July 28 '44	175.00	F. F. Handler
8070	May 16 '45	3900.00	F. F. Handler
8070	June 28 '45	6012.24	F. F. Handler
8070	June 30 '45	93.68	F. F. Handler
8070	Nov. 15 '45	3700.00	F. F. Handler
8070	July 15 '46	350.00	F. F. Handler
8070	July 1 '47	5474.99	F. F. Handler

GOVERNMENT'S EXHIBIT 2-C

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF COLUMBUS

COLUMBUS, OHIO MAY 1 - 43 No. C 30503

PAY TO THE ORDER OF E. F. Handler \$ 750.00

FIRST FEDERAL S. & L. ASSN. **7500 & 00 CTS**

FIRST-FEDERAL SAVINGS AND LOAN ASSOCIATION

TO THE HUNTINGTON NATIONAL BANK,
OF COLUMBUS
25-2 COLUMBUS, OHIO.

By W. E. Edson PRESIDENT
R. E. Davis AUTHORIZED SIGNATURE

E. F. Handler
Buckeye Fly Co.

32.3
24.10
10.00

GOVERNMENT'S EXHIBIT 2-C

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF COLUMBUS

COLUMBUS, OHIO MAY 1 - 43 No. CA 4616

PAY TO THE ORDER OF E. F. Handler \$ 3900.00

FIRST FEDERAL S. & L. ASSN. **3900 & 00 CTS**

FIRST-FEDERAL SAVINGS AND LOAN ASSOCIATION

TO THE HUNTINGTON NATIONAL BANK,
OF COLUMBUS
25-2 COLUMBUS, OHIO.

By W. E. Edson PRESIDENT
Alberta W. Zenger AUTHORIZED SIGNATURE

GOVERNMENT'S EXHIBIT 2-C

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF COLUMBUS

COLUMBUS, OHIO No. CA 6873

PAY TO THE ORDER OF *F. F. Haidt* \$ 3700⁰⁰

\$3700.00 CTS

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION

TO THE HUNTINGTON NATIONAL BANK, OF COLUMBUS

25-2 COLUMBUS, OHIO.

BY *W. C. Edson* PRESIDENT
Margaret J. Embury AUTHORIZED SIGNATURE

F. F. Haidt
PAY TO THE ORDER OF
M. J. Embury

PAY THE HUNTINGTON NAT'L BANK,
COLUMBUS, OHIO, OR ORDER,
VERCOE & COMPANY.

32-3
11-10-19
5410

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF COLUMBUS

COLUMBUS, OHIO No. CA 10932

26
16-10-19
25-2

PAY TO THE ORDER OF *F. F. Haidt* \$ 5000⁰⁰

\$5000.00 CTS

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION

TO THE HUNTINGTON NATIONAL BANK, OF COLUMBUS

25-2 COLUMBUS, OHIO.

BY *W. C. Edson* PRESIDENT
Alberta W. Yeager AUTHORIZED SIGNATURE

25-2 OF COLUMBUS COLUMBUS, OHIO. BY *Margaret J. Embury* PRESIDENT AUTHORIZED SIGNATURE

F. F. Handlin
 PAY TO THE ORDER OF
W. F. Handlin
 BY THE HUNTINGTON NAT'L BANK
 COLUMBUS, OHIO, OR ORDER,
 VERVOE & COMPANY.

32.3
 17.12.12
 1910

GOVERNMENT'S EXHIBIT 2-C


 **FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION**
 OF COLUMBUS
 COLUMBUS, OHIO No. CA10932
 ORDER OF *F. F. Handlin* \$5000
\$5000 & 00/100
 FIRST FEDERAL S. & L. ASSN. FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
 TO THE HUNTINGTON NATIONAL BANK, OF COLUMBUS
 25-2 COLUMBUS, OHIO.
 BY *W. F. Handlin* PRESIDENT
Alberta W. Younger AUTHORIZED SIGNATURE

F. F. Handlin
no frames? if possible

32.3
 17.12.12
 1910

700

GOVERNMENT'S EXHIBIT 2-C



FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF COLUMBUS

COLUMBUS, OHIO JUL 1 - 1947 No. CA 16592

PAY TO THE ORDER OF *D. F. Handley* \$ *5474 98*

FIRST FEDERAL S. & L. ASSN. **\$5474 & 99 CTS**

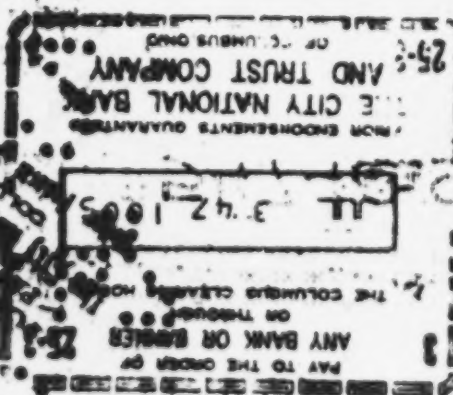
THE HUNTINGTON NATIONAL BANK.
OF COLUMBUS
25-2 COLUMBUS, OHIO.

FIRST-FEDERAL SAVINGS AND LOAN ASSOCIATION

W. Edson PRESIDENT

BY *Alberta M. Younger* AUTHORIZED SIGNATURE

D. F. Handley
James E. Younger



1211

GOVERNMENT'S EXHIBIT 2-C

No.	Maker's Name	Endorser's Name	Date	Bank No.	
					44056
					44036
870	Perry Holdre	no	25-3		25.74
19600	Central Assn	R C Marsh	25-1		40.00
1701	Penn R R	C W Martin	25-2		100.00
613	F E Edmund	Clear Crayford	69-22		1.00
506070	L S Money Order	C B Crayford			1.00
	Russell & Treasure	Daisy Cavendish	25-1		2.00
4404	Decker on my	Arthur Knicker	25-3		7.27
1439	Wash State Ins	H O Zimmerman	25-3		20.10
1446	"	W H Kessler			25.23
1441	"	Lucy Bee			29.20
1442	"	J T McCoy			24.06
49043	Wendel Bristol	L C McGee	25-15		39.27
49062	"	Lynn Guish			40.22
49060	"	Chas Wheeler			45.29
1725	Mallett Dicks	Naomathial	25-2		3.46
28162	Freston Tie	Fred Grime	1-8		7.20
49036	Wendel Bristol	Harry Beck	25-15		79.16
49038	"	Justin Boyer	"		40.17
31692	"	Ger Hulsh	25-3		59.20
49050	"	Robt Simpson	"		20.20

Note

For lower portion of this
page see next frame.

47060		W. W. W. W.		
1725	Mallett Smith	Naoma Trish	25-2	3.26
28162	Freston Tice	Fred Prime	1-8	1.20
49036	Wendy Bristol	Harry Beck	25-15	73.26
49038	"	Justin Boyer	"	40.17
31692	"	Ger. Nelson	25-3	53.20
49050	"	Robt Simpson	"	33.20
19517	W B IV S	John Houch	25-1	24.10
349149	W B S	J. Arnyan	6-1	20.10
3500294	/	/	/	20.10
3500590	/	/	/	27.09
26203	Fry, Jenkins	S. Schalit	25-3	15.00
26210	/	/	/	21.78
26204	/	/	/	2.00
D2613	C. S. Wilson	Eve Klembin	25-3	15.23
98	Hann Hanne	H. J. Frost	25-1	10.00
1177	Independent Theatre	L. J. Pettitt	6-68 4	20.79
128	Ohio Realty	Glen Smith	25-1	7.20
357	J. P. Casey	us	25-1	20.00
	J. M. Cypri	us	56-397	20.10
	J. O. Leeger	F. Handler	25-2	37.22
1348	Walter J. 77	/	25-1	173.20
131	J. C. Robin 77	F. Handler	25-3	209.22
				2,170.26

(1218)

F. J. Handler
Buckeye Fly Co.

32.3
 3.4.10
 1950

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
 COLUMBUS

COLUMBUS, OHIO. MAY 1 1950 No. CA 4616

PAY TO THE ORDER OF *F. J. Handler* \$ *3900*

THREE THOUSAND & NO/100 DOLLARS

FIRST-FEDERAL SAVINGS AND LOAN ASSOCIATION

TO THE HUNTINGTON NATIONAL BANK, OF COLUMBUS

25-2 COLUMBUS, OHIO.

By *W. E. Lidson* PRESIDENT
Alberta W. Zaenger AUTHORIZED SIGNATURE

F. J. Handler

MARKET EXCHANGE BANK
 MAY 19 1950
 ST. B. BANK FOR INVEST CO.

RECORD

P. 703 - 725

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

1209

703

Name **A WAYNE FRIEDBERG**
For Account of ~~SAVING BANK~~ 1119 BRYDEN RD
Address **COLUMBUS OHIO**

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT				BALANCE	MEMO. OF INTEREST		
						Debit	✓	Credit	✓		Days	DE.	CR.
930.00	FEB 5 36			ON ACCT.				930.00		930.00 CR			
	C FEB 7 36	25		NATL CITY BANK	37	930.00				0			
	FEB 29 36	✓ 25		STK POSITION NATL CITY BANK									
	MAR 9 36			POSTAGE - INS		.18				.18			
.18	MAR 23 36			ON ACCT.				.18		0			
	MAR 23 36		✓ 25	NATL CITY BANK	DEL								
	AUG 13 36	✓ 25		NATL CITY BANK N Y	REC								
	AUG 17 36		✓ 25	NATL CITY BANK	44			1093.67		1093.67 CR			
* 1093.67	CAUG 13 36			POSTAGE & INS		.25				* 1093.42 CR			
1093.42	C AUG 25 36	50		KROGER	20%	1042.00				51.42 CR			
	AUG 31 36	✓ 50		STK POSITION KROGER				51.42		51.42 CR			
	SEP 30 36	✓ 50		STK POSITION KROGER				51.42		51.42 CR			
* 51.42	C NOV 5 36	✓ 50		KROGER	24%			1201.72		1253.14 CR			
	NOV 30 36			BALANCE				1253.14		1253.14 CR			
1253.14	C DEC 29 36	100		KROGER	21%	2175.00				921.86			
921.86	DEC 31 36			INT 5%		.38				922.24			

3-276?
500 38

FORWARDED

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

LOAN CARD

3 (1224
703)

Name A. WAYNE FRIEDBERG
For Account of 533 LILLEY AVE
Address COLUMBUS OHIO

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT		BALANCE	MEMO. OF INTEREST
						Debit	Credit		
	MAY 31 37	STK 100	POSITION	BUDD MFG AMALGAMATED LEATHER ✓		165.54		165.54	30 - 4000
165.54	MAY 30 37			INT 5% ✓		.68		166.22	5% 68
	JUN 30 37	STK 100	POSITION	BUDD MFG AMALGAMATED LEATHER ✓		166.22		166.22	31 - 5100
166.22	JUL 31 37			INT 5% ✓		.71		166.93	5% 71
	AUG 31 37	STK 100	POSITION	BUDD MFG AMALGAMATED LEATHER ✓		166.93		166.93	31 - 5100
166.93	SEP 31 37			INT 5% ✓		.71		167.64	5% 71
	AUG 31 37	STK 100	POSITION	AMALGAMATED LEATHER BUDD MFG ✓		167.64		167.64	30 - 5100
167.64	SEP 30 37			INT 5 1/2 ✓		.76		168.40	5% 76
	SEP 30 37	STK 100	POSITION	AMALGAMATED LEATHER BUDD MFG ✓		168.40		168.40	12
168.40	OCT 18 37	100		AMALGAMATED LEATHER 2 3/4		270.00		438.40	1
438.40	OCT 19 37	50		HECKER PROD V TR 8 1/4		421.00		859.40	
859.40	OCT 19 37	1M		MC KESSON ROBBINS 5 1/2-50 101 1/4		1020.00			
				INT		25.67			
		2M		MC KESSON ROBBINS 5 1/2-50 101 1/4		2040.00			
				INT		51.33		3996.40	
3996.40	OCT 29 37			ON ACCOUNT			3137.00	859.40	3
859.40	OCT 22 37			POSTAGE & INS		.45		859.85	9-13770
	OCT 22 37		2M	MC KESSON ROBBINS CV DEB 5 1/2-50 DEL					5% 210
859.85	OCT 31 37			INT 5 1/2		2.10		861.95	

Number or line printed in red on original exhibit.

GOVERNMENT'S EXHIBIT 2-N

Name _____
For Account of _____
Address _____

DAN CARD

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT				BALANCE	MEMO. OF INTEREST
						Debit	✓	Credit	✓		
	OCT 31 37	STK POSITION		AMALGAMATED LEATHER ✓ BUDD MFG HECKER PROD MC KESSON ROBBINS 5/4-50						861.95	
861.95	NOV 4	200 100 50 IM		11/1 CPN IM MCK ROB J				27.50		834.45	26-25128 (2)
834.45	NOV 30 37			INT 5 1/2		3.83				838.28	52 392
	DEC 30 37	200 100 50 IM		AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/4-50		838.28				838.28	31-25978 (2)
838.28	DEC 31 37			INT 5 1/2		3.96				842.24	52 396
	JAN 31 38	STK POSITION		AMALGAMATED LEATHER ✓ BUDD MFG HECKER PROD VTC ✓ MC KESSON ROBBINS 5/4-50		842.24				842.24	606
842.24	JAN 31 38	200 100 50 IM		INT 6 1/2		4.35				846.59	31-26102 (2) 606 435
	JUN 31 38	STK POSITION		AMALGAMATED LEATHER ✓ BUDD MFG HECKER PROD VTC ✓ MC KESSON ROBBINS 5/4-50		846.59				846.59	
846.59	FEB 1 38	200 100 50 IM		DIV 50 HECKER PROD .15				7.50		839.09	27-23499 (2) 606 391
839.09	FEB 28 38			INT 6 1/2		3.91				843.00	
	FEB 28 38	STK POSITION		AMALGAMATED LEATHER ✓ BUDD MFG HECKER PROD VTC ✓ MC KESSON ROBBINS 5/4-50		843.00				843.00	26-24918 (26) 606 865
843.00	MAR 26 38	200 100 50 IM		INT 6 1/2		3.63				846.63	5

* Number or line printed in red on original exhibit.

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

Name
For Account of
Address

A. WAYNE FRIEDBERG
533 LILLEY AVE
COLUMBUS OHIO

(1223)
707

5

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT				BALANCE	MEMO. OF INTEREST
						Debit	✓	Credit	✓		
	MAR 31 38	STK	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2-50		846.65				846.65	X - X y y 6 60% 4 37 (31)
846.65	APR 26 38	100		INT 6%		4.37				851.02	
	APR 30 38	50	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2-50		851.02				851.02	
651.02	MAY 2 38	IM		DIV 50 HECKER PROD .15				7.50		843.52	- 6
843.52	MAY 4			MAY 1ST CPN IM MC K 5/2-50 J				27.50		816.02	- y y - 2474 (30)
816.02	MAY 26 38			INT 6%		4.12				820.14	69% 4 12
	MAY 31 38	STK	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2-50		820.14				820.14	- 31- 4 23
820.14	JUN 26 38	100		INT 6%		4.23				824.37	
	JUN 30 38	50	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2-50		824.37				824.37	X - 2474 (30) 60% 4 12
824.37	JUL 26 38	IM		INT 6%		4.12				828.49	
	JUL 31 38	STK	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2-50		828.49				828.49	- 31 69% 4 27
848.49	AUG 1 38	100		DIV 50 HECKER PRODS 15CTS				7.50		840.99	
820.99	AUG 26 38	50		INT 6%		4.27				820.99	
		IM								825.26	

* Number or line printed in red on original exhibit.

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

Name **A. WAYNE FRIEDBERG**
For Account of **533 LILLEY AVE**
Address **COLUMBUS OHIO**

LOAN CARD

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT		BALANCE	MEMO. OF INTEREST
						Debit	Credit		
	AUG 31 38	STK	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2 50		825.26		825.26	31 6% 4 ²⁶
825.26	SEP 26 38	200		INT 6%		4.26		829.52	
	SEP 30 38	100	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2 50		829.52		829.52	30 6% 4 ¹⁵
929.52	OCT 20 38	50		INT 5%		4.15		833.67	
	OCT 31 38	IM	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2 50		833.67		833.67	6
833.67	NOV 1 38			DIV 50 HECKER PROD	.15		7.50	826.17	1
926.17	NOV 2			11/1.38 CPN 1, M MCK & R 5/2	J		27.50	798.67	24 6% 4 ¹⁶
798.67	NOV 26 38			INT 6%		4.16		802.83	
	NOV 30 38	STK	POSITION	AMALGAMATED LEATHER BUDD MFG HECKER PROD VTC MC KESSON ROBBINS 5/2 50		802.83		802.83	9
802.83	DEC 13 38	200		MARINE MIDLAND	5	509.00		1311.83	8
1311.83	DEC 20 38	100	100	BUDD MFG	5%		558.98	752.85	12- 6% 4 ⁵⁸
752.85				INT 6%		4.58		757.43	
	DEC 31 38	STK	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MC KESSON ROBBINS 5/2 50		757.43		757.43	8
757.43	JAN 3 39	200		DIV 100 MARINE MIDLAND	.12		12.00	745.43	23- 8%
745.43	JAN 20 39	50		INT 6%		3.86		749.29	6% 3 ⁸⁶

* Number or line printed in red on original exhibit.

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

Name
For Account of
Address

A. WAYNE FRIEDBERG
533 LILLEY AVE.
COLUMBUS OHIO

(1205)
709

7

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT		BALANCE	MEMO. OF INTEREST
						Debit	Credit		
	JUN 31 39	STK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MC NESSON ROBBINS 5/2 50		749.29		749.29	-6
749.29	FEB 1 39			DIV 50 HECKER PROD	.15		7.50	741.79	-25 690 3 43
741.79	FEB 26 39			INT 6		3.83		745.62	
	FEB 28 39	STK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MC NESSON ROBBINS 5/2 50		745.62		745.62	-28 67 3 48
745.62	MAR 26 39			INT 6		3.48		749.10	
	MAR 31 39	STK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MC NESSON ROBBINS 5/2 50		749.10		749.10	-6
749.10	APR 1 39			DIV 100 MARINE MIDLAND	.10		10.00	739.10	-25 - 690 3 82
739.10	APR 26 39			INT 6		3.82		742.92	
	APR 30 39	STK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MC NESSON ROBBINS 5/2 50		742.92		742.92	-30 690 3 71
742.92	MAY 1 39			DIV 50 HECKER PROD	.15		7.50	735.42	
735.42	MAY 26 39			INT 6		3.71		739.13	
	MAY 31 39	STK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MC NESSON ROBBINS 5/2 50		739.13		739.13	
739.13	JUN 14 39			DIV 50 HECKER PROD	.40		20.00	719.13	
719.13	JUN 26 39			INT 6		3.77		722.90	

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FORMAL-PSI

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

(1226)
710

8

Name
For Account of
Address

A. WAYNE FRIEDBERG

~~XXXXXXXXXXXX~~
COLUMBUS 6

208 S. STANDWOOD RD.

• ~~XXXX~~

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT				BALANCE	MEMO. OF INTEREST
						Debit	✓	Credit	✓		
	JUN 30 39	STK	POSITION	AMALGAMATED LEATHER ✓ HECKER PROD MARINE MIDLAND MC KESSON ROBBINS 5/2-50		722.90				722.90	30 6% 3 ⁶¹
722.90	JUL 1 39	200		DIV 100 MARINE MIDLAND .10				10.00		712.90	
712.90	JUL 26 39	50		INT ⁶		3.61				718.51	9% 2 ⁰⁰ letter 7/7/39
	JUL 26 39	100		CARRYING CHRG		2.00					
		IM									
	JUL 31 39	STK	POSITION	AMALGAMATED LEATHER ✓ HECKER PROD MARINE MIDLAND MC KESSON ROBBINS 5/2-50		718.51				718.51	✓ 2000
718.51	AUG 1 39	200		DIV 50 HECKER PROD .15				7.50		711.01	67: 3 ⁷⁰
711.01	AUG 26 39	50		INT ⁶		3.70				716.71	9% 2 ⁰⁰
	AUG 26 39	100		CARRYING CHARGE		2.00					
		IM									
	AUG 31 39	STK	POSITION	AMALGAMATED LEATHER ✓ HECKER PROD MARINE MIDLAND MC KESSON ROBBINS 5/2-50		716.71				716.71	31 6% 3 ⁷⁰
716.71	SEP 26 39	200		INT ⁶		3.70				722.41	9% 2 ⁰⁰
	SEP 26 39	50		CARRYING CHARGE		2.00					
		100									
		IM									
	SEP 30 39	STK	POSITION	AMALGAMATED LEATHER ✓ HECKER PROD MARINE MIDLAND MC KESSON ROBBINS 5/2-50		722.41				722.41	30 6% 3 ⁶¹
722.41	OCT 26 39	200		INT ⁶		3.61				726.02	9% 2 ⁰⁰
	OCT 26 39	50		CARRYING CHRG		2.00					
		100									
		IM									

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UNRECEIVED

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

(1227)
(711)

9

Name
For Account of
Address

A. WAYNE FRIEDBERG
208 S. STANDWOOD RD.
COLUMBUS O

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT		BALANCE	MEMO. OF INTEREST
						Debit	Credit		
	OCT 31 39	STK POSITION		AMALGAMATED LEATHER ✓ HECKER PROD ✓ MARINE MIDLAND ✓ MC KESSON ROBBINS 5/2-50 ✓		728.02		728.02	31
728.02	NOV 1 39			DIV 50 HECKLA PROD	.15		7.50	720.52	3 26
720.52	NOV 26 39			INT ✓ CARRYING CHARGE		3.76 2.00		726.28	
	NOV 30 39	STK POSITION		AMALGAMATED LEATHER ✓ HECKER PROD ✓ MARINE MIDLAND ✓ MC KESSON ROBBINS 5/2-50 ✓		726.28		726.28	30
726.28	DEC 26 39			INT ✓ CARRYING CHARGE		3.63 2.00		731.91	6% 3 63 9% 2 00
	DEC 31 39	STK POSITION		AMALGAMATED LEATHER ✓ HECKER PROD ✓ MARINE MIDLAND ✓ MC KESSON ROBBINS 5/2-50 ✓		731.91		731.91	7
731.91	JAN 2 40			DIV 100 MARINE MIDLAND	.10		10.00	721.91	24
721.91	JAN 26 40			INT ✓ CARRYING CHARGE		3.74 2.00		727.65	6% 3 14 9% 2 00
	JAN 31 40	STK POSITION		AMALGAMATED LEATHER ✓ HECKER PROD ✓ MARINE MIDLAND ✓ MC KESSON ROBBINS 5/2-50 ✓		727.65		727.65	31
727.65	FEB 1 40			DIV 50 HECKER PROD	.15		7.50	720.15	6% 3 76 9% 2 00
720.15	FEB 26 40			INT ✓ CARRYING CHARGE		3.76 2.00		725.91	

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VERCOR & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

A. WAYNE FRIEDBERG
208 S. STANDWOOD RD.
COLUMBUS O

(1228)
(712)

10

Name
For Account of
Address

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT				BALANCE	MEMO. OF INTEREST
						Debit	✓	Credit	✓		
725.91	FEB 25 40	3TK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		725.91				725.91	29 69 3 ⁵⁰
	MAR 26 40			INT 6% CARRYING CHG		3.50 2.00				731.41	7-2-2
731.41	MAR 31 40	3TK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		731.41				731.41	31 69 3 ⁷⁴
721.41	APR 1 40			DIV 100 MARINE MIDLAND .10				10.00		721.41	
	APR 26 40			INT 6% CARRYING CHG		3.74 2.00				727.15	7-2-2
727.15	APR 30 40	3TK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		727.15				727.15	5
719.65	MAY 1 40			DIV 50 HECKER PROD .15				7.50		719.65	25 69 3 ⁶⁰
	MAY 26 40			INT 6% CARRYING CHG		3.60 2.00				725.25	9c 2 ⁰⁰
725.25	JUN 31 40	3TK 200 50 100 IM	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		725.25 725.25				725.25 725.25	31 69 3 ⁷⁴
	JUN 26 40			INT 6% CARRYING CHG		3.74 2.00				730.99	9c 2 ⁰⁰
										FORWARDED	

* Number or line printed in red on original exhibit.

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

Name A. WAYNE FRIEDBERG
For Account of 208 S. STANDWOOD RD.
Address COLUMBUS O

MAN CARD

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT		BALANCE	MEMO. OF INTEREST		
						Debit	Credit		Days	DR.	CR.
		STK POSITION		AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		730.99		730.99 - 5			
730.99	JUL 1 40			DIV 100 MARINE MIDLAND .10			10.00	720.99 - 25		6% 3 ⁶¹	
720.99	JUL 26 40			INT 6% CARRYING CHG		3.61 2.00		726.60		9% 2 ⁰⁰	
		STK POSITION		AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		726.60		726.60 - 6			
726.60	AUG 1 40			DIV 50 HECKER PROD .15			7.50	719.10 - 25		6% 3 ⁷²	
719.10	AUG 26 40			INT 6% CARRYING CHG		3.72 2.00		724.82		9% 2 ⁰⁰	
		STK POSITION		AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		724.82		724.82 - 31		6% 3 ⁷⁴	
724.82	SEP 26 40			INT 6% CARRYING CHG		3.74 2.00		730.56		9% 2 ⁰⁰	
		STK POSITION		AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		730.56		730.56 - 30		6% 3 ⁶⁵	
730.56	OCT 26 40			INT 6% CARRYING CHG		3.65 2.00		736.21		9% 2 ⁰⁰	

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VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

(1230)
(714)

12

Name A WAYNE FRIEDBERG
For Account of 208 S STANDWOOD RD.
Address COLUMBUS, OHIO

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT			BALANCE	MEMO. OF INTEREST		
						Debit	✓	Credit		Days	DR.	CR.
	Oct 31 40	STK	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		736.21			736.21	6		
736.21	Nov 1 40	200		DIV 50 HECKER PROD	.15			7.50	728.71	25		
728.71	Nov 26 40	50		INT 6%		3.77						
		100		CARRYING CHG		2.00			734.48			
		IM										
	Nov 30 40	STK	POSITION	AMALGAMATED LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		734.48			734.48	30		
734.48	Dec 26 40	200		INT 6%		3.67						
		50		CARRYING CHG		2.00			740.15			
		100										
		IM										
	Dec 31 40	STK	POSITION	AMALGAMATED KERNER LEATHER HECKER PROD MARINE MIDLAND MCKESSON ROBBINS 5/2-50		740.15			740.15	7		
740.15	Jan 2 41	200		DIV 100 MARINE MIDLAND	.10			10.00	730.15	24		
730.15	Jan 26 41	50		INT 6%		3.79						
		100		CARRYING CHG		2.00			735.94			
		IM										

* Number or line printed in red on original exhibit.

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

(1231)
715

13

Name
For Account of
Address

A WAYNE FRIEDBERG
208 S. STANDWOOD RD.
COLUMBUS 0

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT			BALANCE	MEMO. OF INTEREST		
						Debit	✓	Credit		Days	DR.	CR.
				POSITION								
	Jan 31 41	STK 200 50 100 IM		AMALGAMATED LEATHER ✓ HECKER PROD ✓ MARINE MIDLAND ✓ MCKESSON ROBBINS 5/2-50 ✓		735.94			735.94	- 6		
735.94	Feb 1 41			DIV 50 HECKER PROD	.15			7.50	728.44	- 25		
728.44	Feb 26 41			INT 6% CARRYING CHG		3.76 2.00			734.20	7	69.376 962.02	
				POSITION								
	Feb 26 41	STK 200 50 100 IM		AMALGAMATED LEATHER ✓ HECKER PROD ✓ MARINE MIDLAND ✓ MCKESSON ROBBINS 5/2-50 ✓		734.20			734.20	76 - 20.557	78	
734.20	Mar 26 41			INT 6% CARRYING CHG		3.42 2.00			739.62	5	69.376 3.77 2.00	
				POSITION								
	Mar 31 41	STK 200 50 100 IM		AMALGAMATED LEATHER ✓ HECKER PROD ✓ MARINE MIDLAND ✓ MC KESSON ROBBINS 5/2-50 ✓		739.62			739.62			
739.62	Apr 1 41			DIV 100 MARINE MIDLAND .10				10.00	729.62	75 - 22.679	71	
729.62	Apr 26 41			INT 6% CARRYING CHG		3.77 2.00			735.39	69.376 3.77 2.00		

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FORWARDED

Number or line printed in red on original exhibit.

FORWARDED

VERCOE & COMPANY
Huntington Bank Building
Columbus, Ohio

GOVERNMENT'S EXHIBIT 2-N

(1234)
(718)

16

Name A WAYNE FRIEDBERG
For Account of 1350 NEIL AVENUE
Address COLUMBUS 1, OHIO

LOAN CARD

OLD BALANCE	DATE	Bought or Received	Sold or Delivered	DESCRIPTION	Price	AMOUNT		BALANCE	MEMO OF INTEREST		
						Debit	Credit		Days	DR.	CR.
	NOV 15 45			CN ACCT			5,000.00	5,000.00	OP		
5,000.00	NOV 19	5M		U S TREAS 2 1/2 1967/72 11/15/45 100 NET	5,000.00			00**			
	NOV 29		5M	U S TREAS 2 1/2 67/72 NOVEMBER DEL							
	DEC 17 46			CN ACCT			500.00	500.00	OP		
500.00	DEC 17			CN ACCT			500.00	1,000.00	OP		
	DEC 31 46			BALANCE			1,000.00	1,000.00	CR		
	MAR 31 47			BALANCE			1,000.00	1,000.00	CR		
	JUN 30 47			BALANCE			1,000.00	1,000.00	CR		
1,000.00	AUG 25			ON ACCT			4,000.00	5,000.00	OP		
	AUG 31 47			BALANCE			5,000.00	5,000.00	OP		
5,000.00	SEP 8	5M		U S TREAS 2 1/2 12/15/67/72 103	5,155.00						
				INT 6/15 TO 9/4	27.66			182.66**			
182.66	SEP 8			ON ACCT			182.66	00**			
	SEP 8		5M	U S TREAS 2 1/2 12/15/67/72 DEL							
	OCT 20 47	5M		DELAWARE HUDSON 4% 1963 93	4,663.65						
				INT	93.89			4,757.54**		1.15	
4,757.54	OCT 16			ON ACCT			4,757.54	00**			
	OCT 31 47	STK POSITION		DELAWARE HUDSON 4% 1963							
	NOV 12	5M	5M	DELAWARE HUDSON 1ST REF MTG 4% 5/1/63 DEL							
	JUL 28 50			ON ACCT			14,225.00	14,225.00	OP		
	JUL 31 50			BALANCE			14,225.00	14,225.00	OP		

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GOVERNMENT'S EXHIBIT 2-U

FEDERAL RESERVE BANK
OF CLEVELAND
FISCAL AGENT OF U. S.

ADVICE

2-U

376579

(719
1225)

ORIGINAL ISSUE	
DENOMINATIONAL EXCHANGE	
COUPON FOR REGISTERED EXCHANGE	
REGISTERED FOR COUPON EXCHANGE	
TRANSFER	

(Requisition No.)

Request dated

SECURITIES AS INDICATED BELOW HAVE BEEN DELIVERED OR SHIPPED

To

Account of

COUPON

REGISTERED

PIECES	AT	SERIAL NUMBERS	FACE AMOUNT	AUTHORIZATION
	\$ 25		\$	
	\$ 50			(Date)
	\$ 100			<i>Trunk</i> (Checked)
	\$ 500			
5	\$ 1M	415835-834	5000	<i>Witt</i> (Approved)
	\$ 5M			
	\$ 10M			DELIVERY
	\$ 100M			<i>Trunk</i> (Checked)
Coupons attached: No. _____ to No. _____			TOTAL, \$ 5000	<i>Witt</i> (Checked)

5/25/45
(Date delivered or shipped)

951293
(Registry number)

IMPORTANT

A copy of this form and an addressed stamped envelope have been enclosed with the securities. If the securities when received are as indicated above, please receipt the form and mail it in the envelope.

Should the securities not be received in due time, wire Audit Department, Federal Reserve Bank of Cleveland, Cleveland, Ohio.

Should the securities when received not be as indicated above, wire Audit Department immediately and hold shipment for instructions.

*Received
Boards
May 31 1945
Witt
3*

720

Mighty
Seventh

★PA 214

FEDERAL RESERVE BANK OF CLEVELAND

Fiscal Agent of the United States

MAIN OFFICE—CLEVELAND 1, OHIO

BRANCHES—CINCINNATI 1, OHIO, AND PITTSBURGH 19, PA.

Mighty
Seventh

OFFICIAL PURCHASE FORM—SEVENTH WAR LOAN DRIVE

IMPORTANT—USE A SEPARATE FORM FOR EACH ISSUE PURCHASED—IMPORTANT

DESIGNATE BELOW ISSUE AND DENOMINATIONS DESIRED

TREASURY BONDS			½% Cert. of Indebt.	UNITED STATES SAVINGS BONDS		Series C Treasury Savings Notes	Denominations
2½%	2¼%	1½%		Series F	Series G		
XXXX	XXXX	XXXX	XXXX		XXXX	XXXX	@ \$ 25
XXXX	XXXX	XXXX	XXXX				@ \$ 100
✓			XXXX				@ \$ 500
✓					✓		@ \$ 1,000
✓							@ \$ 5,000
							@ \$ 10,000
				XXXX	XXXX		@ \$ 100,000
XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		@ \$ 500,000
				XXXX	XXXX		@ \$ 1,000,000

2½%, 2¼% and 1½% Treasury bonds are issued in both registered and coupon form.

½% Certificates of Indebtedness are issued in coupon form only.

Series F and G Savings bonds and Series C notes are issued in registered form only.

In order to expedite the delivery of securities it is necessary that the "Coupon Form" or "Registration Instructions" blank below be properly filled in.

COUPON FORM

If securities in coupon form are desired, print name and address of purchaser in this space.

F. F. Handler

(Name of purchaser)

1350 Neil Ave Apt J.

(Street address)

Columbus

(City or town)

Ohio

(State)

REGISTRATION INSTRUCTIONS

If securities in registered form are requested, print hereunder how they are to be described including address.

(Street address)

(City or town)

(State)

SPECIAL DELIVERY INSTRUCTIONS

INSTRUCTIONS FOR COMPUTATION OF ACCRUED INTEREST

Accrued interest on subscriptions for \$500 or \$1,000 for the 2½%, 2¼% or 1½% bonds will be waived.

Accrued interest on all other subscriptions for bonds and on all subscriptions for certificates of indebtedness will be collected for the FULL AMOUNT of the subscription from June 1, 1945, at the following rates:

One day's accrued interest per \$1,000

2½% TREASURY BONDS OF 1967-72 \$.068

2¼% TREASURY BONDS OF 1959-62061

1½% TREASURY BONDS OF 1950041

½% CERTIFICATES OF INDEBTEDNESS024

Accrued interest shall be computed to the date that available funds will be received by the Federal Reserve Bank of Cleveland or its branches at Cincinnati, Ohio, and Pittsburgh, Pa.

The undersigned purchases securities of the issue or series indicated, in the face amount of . . . \$

COST OF SECURITIES PURCHASED

ISSUE PRICE

PLUS ACCRUED INTEREST

TOTAL PURCHASE PRICE

CERTIFICATION BY PURCHASER OF 1½% BONDS

In all instances where 1½% bonds are being purchased, if this purchase form is forwarded directly to the Federal Reserve Bank of Cleveland or its branches and not cleared through a bank, it is necessary that the following certification be signed by the purchaser:

I hereby certify that this purchase is for my ~~own~~ individual, partnership (other than securities dealer or broker) or personal trust account.

(Date)

(Signature)

CERTIFICATION BY BANK

The certification which appears below must be signed by an officer of the bank handling this purchase order when it covers 2½%, 2¼%, or 1½% Treasury Bonds or ½% Certificates of Indebtedness. When this purchase order is for Series F or G Savings Bonds or Series C Savings Notes it is not necessary to have a signed certification by an officer. An impression of the bank's stamp will suffice.

We hereby certify that this subscription is solely for the account of the customer specified herein, that we have no beneficial interest in the securities subscribed for, and that to the best of our knowledge and belief the subscription conforms in all respects with the requests of the Treasury concerning subscriptions, as set forth in the letter of March 20, 1945, from the Secretary of the Treasury regarding the Seventh War Loan.

We further certify that, if this subscription is for 1½% Treasury Bonds of 1950, the purchase

GOVERNMENT'S EXHIBIT 2-U

Mighty
Seventh

★PA 314

FEDERAL RESERVE BANK OF CLEVELAND

Fiscal Agent of the United States

MAIN OFFICE—CLEVELAND 1, OHIO

BRANCHES—CINCINNATI 1, OHIO, AND PITTSBURGH 19, PA.

Mighty
Seventh

OFFICIAL PURCHASE FORM—SEVENTH WAR LOAN DRIVE

IMPORTANT—USE A SEPARATE FORM FOR EACH ISSUE PURCHASED—IMPORTANT

DESIGNATE BELOW ISSUE AND DENOMINATIONS DESIRED

TREASURY BONDS			½% Cert. of Indebt.	UNITED STATES SAVINGS BONDS		Series C Treasury Savings Notes	Denominations
3½%	2½%	1½%		Series F	Series G		
XXXX	XXXX	XXXX	XXXX		XXXX	XXXX	@ \$ 25
XXXX	XXXX	XXXX	XXXX				@ \$ 100
			XXXX				@ \$ 500
							@ \$ 1,000
							@ \$ 5,000
							@ \$ 10,000
				XXXX	XXXX		@ \$ 100,000
XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		@ \$ 500,000
				XXXX	XXXX		@ \$ 1,000,000

3½%, 2½% and 1½% Treasury bonds are issued in both registered and coupon form.

½% Certificates of Indebtedness are issued in coupon form only.

Series F and G Savings bonds and Series C notes are issued in registered form only.

In order to expedite the delivery of securities it is necessary that the "Coupon Form" or "Registration Instructions" block below be properly filled in.

COUPON FORM

If securities in coupon form are desired, print name and address of purchaser in this space.

F. F. Handley

(Name of purchaser)

1350 Neil Ave Apt J

(Street address)

Columbus

(City & State)

Ohio

(State)

REGISTRATION INSTRUCTIONS

If securities in registered form are requested, print hereunder how they are to be inscribed including address.

(Street address)

INSTRUCTIONS FOR COMPUTATION OF ACCRUED INTEREST

Accrued interest on subscriptions for \$500 or \$1,000 for the 2½%, 2¾% or 1½% bonds will be waived.

Accrued interest on all other subscriptions for bonds and on all subscriptions for certificates of indebtedness will be collected for the FULL AMOUNT of the subscription from June 1, 1945, at the following rates:

One day's accrued interest per \$1,000

2½% TREASURY BONDS OF 1967-72 \$.068

2¾% TREASURY BONDS OF 1959-62061

1½% TREASURY BONDS OF 1950041

½% CERTIFICATES OF INDEBTEDNESS024

Accrued interest will be computed to the date that available funds will be received by the Federal Reserve Bank of Cleveland or its branches at Cincinnati, Ohio, and Pittsburgh, Pa.

The undersigned purchases securities of the issue or series indicated, in the face amount of \$ 5000 -

COST OF SECURITIES PURCHASED

ISSUE PRICE 5000 -

PLUS ACCRUED INTEREST

TOTAL PURCHASE PRICE 5000 -

CERTIFICATION BY PURCHASER OF 1½% BONDS

In all instances where 1½% bonds are being purchased, if this purchase form is forwarded directly to the Federal Reserve Bank of Cleveland or its branches and not cleared through a bank, it is necessary that the following certification be signed by the purchaser:

I hereby certify that this purchase is for my account as an individual, partnership (other than securities dealer or broker) or personal trust account.

(Date)

(Signature of purchaser)

CERTIFICATION BY BANK

The certification which appears below must be signed by an officer of the bank handling this purchase order when it covers 2½%, 2¾%, or 1½% Treasury Bonds or ½% Certificates of Indebtedness. When this purchase order is for Series F or G Savings Bonds or Series Q Savings Notes it is not necessary to have a signed certification by an officer. An impression of the bank's stamp will suffice.

We hereby certify that this subscription is solely for the account of the customer specified herein, that we have no beneficial interest in the securities subscribed for, and that to the best of our knowledge and belief the subscription conforms in all respects with the requests of the Treasury concerning subscriptions, as set forth in the letter of March 20, 1945, from the Secretary of the Treasury regard-

GOVERNMENT'S EXHIBIT 2-U

GOVERNMENT'S EXHIBIT 4-A

(722)
(1238)

Loans with
State Mutual Life Assurance Co
of Worcester, MASS.

INTEREST ACCOUNT		LOAN ACCOUNT	
DATE	AMT	DATE	AMT
MAY 1 1931	150	APR 11 1931	200
		MAY 1 1931	50
MAY 8 1931			

DAVID FRIEDBERG
COLUMBUS

Policy No. 308,174
Date 1-27-31

6%

150 250

150 50

Int. Still Due

179

E. J. B.

13 Lines Bureau Div. Insurance Bureau No. 100-204 AP 7633P

723

1239

✓ GOVERNMENT'S EXHIBIT 4-B

1 as with

State Mutual Life

Insurance Co.
Worcester, Mass.

DAVID FRIEDBERG

COLUMBUS

246,241

9-10-31

INTEREST ACCOUNT

6%

LOAN ACCOUNT

300

INCREASED TO POLICY LOAN

DAVID FRIEDBERG

COLUMBUS

246,241

9-10-31

DAVID FRIEDBERG

COLUMBUS

240,241

9-10-31

INTEREST ACCOUNT

LOAN ACCOUNT

9 3 0 0

BALANCE FROM OLD CARD

DEC 10 1931

DEC 24 1931

INTEREST FROM DEC 2 1931

SEP 28 1932

70488

JUN 9 2354

2334

77755

JAN 2

22733 On acct

11 17

1650

540

22755

688

1622

54074

JUN 1933

926

269

269

42314

AUG 1 1933

11760

22314

22314

22314

SEP 1 1933

200

12314

12314

12314

SEP 7 1934

12314

215234

THE MUNICIPAL COURT OF COLUMBUS---CIVIL DOCKET NO. 414

TITLE OF CASE
PARTIES

The Dispatch Printing Co., Inc.,
34 S. Third St.,
Columbus, O.

Plaintiff

David F. Friedberg,
131 N. Nelson Road
Columbus, O.

Defendant

Charles A. Slade

Attorney for Plaintiff

Attorney for Defendant

	Pro. in Aid	Plaintiff's Costs	Defendant's Costs
Clerk's Fees			40
Bailiff's Fees			2.00
			80
			1.07
Ex. Bailiff's Fees			1.80
Publication			25
Notary Katherine Walton			80
Appraisers			
Jury			
Custodian			
Deposition Pl'tff--Def't			
Garnishee Fees			
Transcript			
Witness			
			7.12
Received \$		on	
Judgment and costs C. B.	P.		
Receipt No.	Harry B. Lamon, Clerk		
Date	By	Dep.	
Received \$ 2.00		Security	
for costs C. B. 7	P. 431	APPLIED TO C.B. 44	P. 591
Receipt No. 55090	Harry B. Lamon, Clerk		
Date 2/27/36 By Z		Dep.	

3 1/2 %, 2 1/2 % and 1 1/2 % Treasury bonds are issued in both registered and coupon form.
 1/2 % Certificates of Indebtedness are issued in coupon form only.
 Series F and G Savings bonds and Series C notes are issued in registered form only.

In order to expedite the delivery of securities it is necessary that the "Coupon Form" or "Registration Instructions" block below be properly filled in.

COUPON FORM

If securities in coupon form are desired, print name and address of purchaser in this space.

F. F. Handler
 (Name of purchaser)
1350 Neil Ave Apt J.
 (Street address)
Columbus **Ohio**
 (City or town) (State)

REGISTRATION INSTRUCTIONS

If securities in registered form are requested, print hereunder how they are to be inscribed including address.

(Street address)
 (City or town) (State)

SPECIAL DELIVERY INSTRUCTIONS

If delivery of the securities to an address other than that reflected in the "Coupon Form" or "Registration Instructions" block is desired, fill in the following information.

Market Exchange Bank
 (Securities to be forwarded to)
150 E Main St
 (Street address)
Columbus **Ohio**
 (City or town) (State)

ALLOCATION OF CREDIT FOR SALE

Credit for this sale will be placed to the address appearing in the "Coupon Form" or "Registration Instructions" block unless allocation letter is attached or this space is filled in.

Call
Ma 3586
 (County) (State)

DUPLICATE—Deliver to banking institution for its file record.

The undersigned purchases securities of the issue or series indicated, in the face amount of

COST OF SECURITIES PURCHASED

ISSUE PRICE

PLUS ACCRUED INTEREST

TOTAL PURCHASE PRICE

5000 -
 5000 -
 5000 -

CERTIFICATION BY PURCHASER OF 1 1/2 % BOND

In all instances where 1 1/2 % bonds are being purchased, this purchase form is forwarded directly to the Federal Reserve Bank of Cleveland or its branches and not cleared through a bank, it is necessary that the following certification be signed by the purchaser:

I hereby certify that this purchase is for my own use as an individual, partnership (other than securities dealer or broker) or personal trust account.

(Date)

(Signature)

PAID \$
 EX-100-1114
 COLUMBUS, OHIO
 MAY 18 1945

CERTIFICATION BY BANK

The certification which appears below must be signed by an officer of the bank handling this purchase order when it covers 2 1/2 %, 2 1/4 %, or 1 1/2 % Treasury Bonds or 1/2 % Certificates of Indebtedness. When this purchase order is for Series F or G Savings Bonds or Series C Savings Notes it is not necessary to have a signed certification by an officer. An impression of the bank's stamp will suffice.

We hereby certify that this subscription is solely for the account of the customer specified herein, that we have no beneficial interest in the securities subscribed for, and that to the best of our knowledge and belief the subscription conforms in all respects with the requests of the Treasury concerning subscriptions, as set forth in the letter of March 20, 1945, from the Secretary of the Treasury regarding the Seventh War Loan.

We further certify that, if this subscription is for 1 1/2 % Treasury Bonds of 1950, the purchase, to the best of our knowledge and belief, is for an individual partnership (other than securities dealer or broker) or personal trust account.

Market Exchange Bank
 (Name of bank)
Columbus Ohio
 (Location of bank)
5-18-45
 (Date)
Ed Sammonworth
 (Signature)

WAR FINANCE COMMISSION RECORD

Name of Volunteer (Print Name)

Telephone No.

Team

Captain

County

Township Division

Banking institution to which purchase form and check delivered:

Market Exchange Bank

(1236)

GOVERNMENT'S EXHIBIT 2-U

1237

GOVERNMENT'S EXHIBIT 5-A

1241

215234

THE MUNICIPAL COURT OF COLUMBUS---CIVIL DOCKET NO. 414

ACTION Account \$ 13.76

DATE	JUDGE	PROCEEDINGS
Feb 26 1936		Petition filed and summons issued.
Feb 28 1936		Summons returned endorsed: On the 27 day of Feb. 19 36 I served this writ on the within named David F. Friedberg by mailing a true and certified copy thereof, with all endorsements thereon to his usual place of residence, 131 N. Nelson Rd. Frank B. Garrish Bailiff Fees \$ 80¢
Mar 17 1936	Pfefferle	Case called, defendant not appearing. Default judgment for plaintiff for \$ 13.76 and also costs of suit.
Mar 28 1936		Issued Execution to Bailiff.
Mar 31 1936		Writ returned Mar 31, 1936. Nothing found to levy on. Does not own Buckeye Tailoring Co. Fees 1.80 A. A. LAMNECK, Ex. Bailiff.
Jan 29 1940		Issued Execution to Bailiff.
Mar 7 1940		Received this Writ Jan 29 1940. Returned same showing no goods or chattels found whereon to make a levy. Fees 1.07 Frank B. Garrish J. M. (unreadable), Ex. Bailiff.

APPEARANCE DOCKET, No. 260

Fees	Cause	Attorneys
<p><i>E 1008 P</i></p> <p><i>23 15 CR 11/31</i></p> <p><i>15 P</i></p> <p><i>2 05 P</i></p> <p><i>150 P</i></p> <p><i>520 P</i></p> <p><i>115 P</i></p> <p><i>80 P</i></p> <p><i>50 P</i></p> <p><i>80 P</i></p> <p><i>Latham 500 P</i></p> <p><i>Dempsey 400 P</i></p> <p><i>Reinhard 400 P</i></p> <p><i>Ad. by pliff. Atty.</i></p> <p><i>Daily Reporter 35 P</i></p> <p><i>" " 25 P</i></p> <p><i>Ohio State J. 11 75 P</i></p> <p><i>61 40</i></p> <p><i>J. P.—Muni. Ct. Clk.</i></p> <p><i>Cons.—Bailiff</i></p> <p><i>Trans. Paid by</i></p> <p><i>Wit. B. Pg.</i></p> <p><i>J. P. Wit.</i></p> <p><i>Muni. Ct. Witness</i></p> <p><i>10/5/37 Recd No/L</i></p> <p><i>265 Bal of acct in the</i></p> <p><i>Case of Arthur Guler vs</i></p> <p><i>OW Death</i></p>	<p>STYLE</p> <p>Home Owners' Loan Corporation of Washington, D.C., a corporation</p> <p>Plaintiff</p> <p>-VS-</p> <p>Frances F. Friedberg and David Friedberg, and Pauline Barton,</p> <p>Defendants</p>	<p>MONEY</p> <p>\$9227.18 D.B.Sharp foreclo- sure, & Receiver</p>

Year	Month	Day	O. B.	Page
1936	July	21	Petition filed.	Copy \$2.50
"	"	21	Precipe filed. Summons issd. Shff. Frank. Co. Ret. Aug. 3, 1936, Ans. Aug. 22, 1936.	
"	"	21	Motion & Memo filed.	
"	"	21	Wm.P.Zinn & Co.apptd.Rec.as per entry.Bond\$300	No. 3, Ra.
"	"	21	Bond filed. Bk. page	
"	"	22	Annuited Pet. of Plaintiff filed Copy 2.00	
"	"	22	Waiver of Service of Summons filed	
"	"	Aug 4	Waiver Entry of Appearance of The Proctorial filed Cld filed	
"	"	Sept 5	Report of Receiver confirmed. In- structions to Receiver Receiver r to Bondsmen released discharged, as per entry	320404 Ra
"	"	1st 3int & final account of Rece filed		
1937	Jun	11	Judgment awarded Plff from Defts Francis F. Friedberg & David Friedberg sum of \$ 9390.11 Costs, Treasurers Sale ordered, as entry	327489 Re
1937	"	"	precipe filed Certificate of judgment issued to Clerk of Franklin County 6-11-37	
"	"	"	4-15-38	
1937	Jul	15	precipe filed Order of Sale issued to Sheriff of Franklin County 6-15-37	
July 24	"	"	Copy of land appraisement filed, property appraised at... \$1000.00	
Sep 8	"	"	Confirmation, Need distributions, deficiency Judgment due Plff from Defts Francis F. &	

COSTS IN CASE
AMT. 61.40
PAID BY SH
DATE 9.15.37

APPEARANCE DOCKET No. 260

FEES	Plff.	Def.	STYLE	Cause	Attorneys
Clerk Fee Fund			<i>HOCC</i>		
Sheriff Fee Fund			<i>vs</i>		
N. P.			<i>James F. Friesling</i>		
From Page <i>1499/4</i> Continued on Page					
Year Month Day	Fees				

1939 Aug 16 Rec'd filed Execution issued by Franklin G 876-39 68-38318

RELEASE OF JUDGMENT

For valuable consideration, the receipt of which is hereby acknowledged the Home Owners' Loan Corporation of Washington, D.C. a corporate instrumentality of the United States of America, hereby releases, cancels, and discharges the judgment obtained in this action and the Clerk of this Court is hereby authorized to cancel and release said judgment and the certificate thereof on the dockets of said court.

WITNESSES:

HOME OWNERS' LOAN CORPORATION

Louise Foote

By A. Walter Burton

Regional Treasurer

Helen Reichling

STATE OF OHIO

SS:

COUNTY OF HAMILTON

Before me, a Notary Public in and for Hamilton County, State of Ohio, personally appeared A. Walter Burton, Regional Treasurer of the Home Owners' Loan Corporation, who acknowledged that he signed this Release of Judgment as said Regional Treasurer, in behalf of said Corporation and by authority of its Board of Directors; that said instrument is the free act and deed of said Home Owners' Loan Corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my hand and affixed my official seal at Cincinnati, Ohio, this 11th day of September A.D. 1939.

SEAL

Mary Rueter
Notary Public

Fee Paid

This is to certify the above Release of Judgment is a true copy of the original, now in the hands of Robert L. Mellman, 150 E. Broad St., Columbus, Ohio, on this 20th day of September, A.D. 1939.

J. Arthur Yoder, Clerk of Courts

By

Geraldine Wheeler
Deputy Clerk

GOVERNMENT'S EXHIBIT 6-A

(1243)

[fol. 1244] GOVERNMENT'S EXHIBIT 6-B

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY,
OHIO

No. 149,916

HOME OWNERS' LOAN CORPORATION, Plaintiff,

vs.

FRANCES F. FRIEDBERG, ET AL., Defendants

JOURNAL ENTRY—Filed June 11, 1937

This cause now coming on for hearing on the original petition and the amended petition of the plaintiff, Home Owners' Loan Corporation, and the evidence, the Court finds that the defendants, Frances F. Friedberg and David Friedberg, have been duly served with summons and that the defendants, The Prudential Insurance Company of America and Real Estate Service, Inc., formerly under the name of The Federal Home and Mortgage Company have duly waived the issuing and service of summons in the above action and have voluntarily entered their appearance herein and that all of said defendants are in default for answer and demurrer and that the allegations of the plaintiff's original and amended petition are thereby confessed by them to be true.

The Court further finds that there is due the plaintiff from the defendants, Frances F. Friedberg and David Friedberg, on the promissory note set forth in the petition with interest to date of this decree the sum of Nine Thousand Three Hundred Ninety Dollars and Eleven Cents (\$9390.11).

The Court further finds that the mortgage herein described provides that the plaintiff, Home Owners' Loan

No. 143,854

Corporation, may pay any and all insurance on the property described upon the failure of the defendants, Frances [fol. 1245] F. Friedberg and David Friedberg, to pay said

insurance, and that all amounts so advanced with interest at the rate of six per cent per annum shall be secured by the mortgage and shall be paid by said defendants on demand; that said defendants have failed to pay the necessary insurance on the property described in the mortgage and that the plaintiff, on the 1st day of December, 1936, advanced the sum of \$23.90 for the payment of necessary insurance, and the plaintiff has a valid lien on said premises under its mortgage for said amount in addition to the sum hereinabove found due plaintiff on its mortgage note.

The Court further finds from the evidence that since the filing of plaintiff's petition on the 21st day of July, 1936, the defendants, Frances F. Friedberg and David Friedberg on September 29, 1936 paid to the plaintiff the sum of \$103.00, and that the sum of \$50.00 was paid by the defendants, Frances F. Friedberg and David Friedberg, to plaintiff on April 14, 1937 and a like sum of \$50.00 was paid by the defendants, Frances F. Friedberg and David Friedberg, to plaintiff on May 11, 1937, and that these payments were properly and correctly credited to said defendants' account.

The Court further finds that in order to secure the payment of said note, the defendants, Frances F. Friedberg and David Friedberg, executed and delivered to said Home Owners' Loan Corporation, the plaintiff, their certain mortgage as in the petition described, and on the real estate therein described; that said mortgage is a good and valid lien on the real estate described in the petition prior to all other liens and that the conditions in said mortgage have been broken.

It is therefore considered by the Court that the plaintiff [fol. 1246] recover from the defendants, Frances F. Friedberg and David Friedberg, the said sum of \$9390.11, and its costs herein expended.

It is further adjudged and decreed that unless the defendants, Frances F. Friedberg and David Friedberg, shall, within three days from the entry of this decree, pay or cause to be paid to the clerk of the court costs of this case and to the plaintiff herein the sum so found due, as aforesaid, with interest, the defendants' equity of redemption be

foreclosed and said real estate be sold and that an order of sale issue therefor to the sheriff of Franklin County, directing him to appraise, advertise and sell said real estate as upon execution, and report his proceedings to this Court for further order.

It is further ordered that certificate of this judgment be filed and recorded in the office of the clerk of the Court of Common Pleas of this County.

It is further ordered that the legal advertisement be published in The Daily Reporter, a newspaper of general circulation in Franklin County, Ohio.

(S.) Reynolds, Judge.

June 10, 1937.

(Here follows 2 photolithographs, side folios 1247, 1248)

732A

FHA Form No. 2004
(Revised July 1, 1939)

IMPORTANT

See instructions on reverse side of
Mortgagors' Property Description

FEDERAL HOUSING ADMINISTRATION

**MORTGAGEE'S
APPLICATION FOR INSURANCE**

UNDER SECTION 203 OF NATIONAL HOUSING ACT

(To be executed in Triplicate, forward Original and Duplicate to Insuring Office)

No. _____
(Case number to be inserted by
insuring office)

FEDERAL HOUSING ADMINISTRATOR,

Dear Sir:

Pursuant to the provisions of Section 203 of Title II of the National Housing Act, the undersigned hereby applies to you for the insurance of a mortgage loan which it regards as safe and desirable, and proposes to make if this application for its insurance is approved. Such mortgage loan will be in the principal amount of \$ 7,600.00 bearing interest at 4 1/2 per centum per annum and payable in 240 equal monthly installments, including interest and principal, of \$ 48.11. In addition to such installments the mortgage will provide for the payment of monthly installments on account of the mortgage insurance premium, and the estimated amounts of taxes, ground rents, special assessments, and fire and other hazard insurance premiums. The estimated amount of the total monthly payment is \$ 59.78.

It is understood that such loan will be secured by a first lien upon real property located at _____

208 South Stannard Road

Barley
(City)

Franklin
(County)

Ohio
(State)

more particularly described in Mortgagors' Property Description.

MORTGAGEE'S VALUATION: Land, \$ 1,700.00 Improvements, \$ 7,950.85 Total, \$ 9,650.85

In support of this application the undersigned submits herewith the following:

1. Photographs of the real property described above.
2. Mortgagors' Statement.
3. Mortgagors' Property Description.
4. Signed or certified copy of purchase agreement, if any.
5. Signed or certified copy of contractors' bid, if any.

The undersigned hereby expressly agrees in the event the insurance herein applied for is granted by you, to pay to you an annual premium in accordance with the Regulations of the Federal Housing Administrator, the first premium payment to be made simultaneously with the granting of such insurance, and until the mortgage is paid in full, or the mortgaged property is acquired by the Administrator, or until the contract of insurance is otherwise terminated, the next and each succeeding premium shall be paid thereafter on the same date in each year as that on which the amortization period begins, the amount of the premium payment for the second year being adjusted so as to accord with such payment date; and further agrees that if the mortgagors shall pay such loan in full prior to its maturity, the undersigned will collect from such mortgagors and pay to you the adjusted premium charge required in such event by the Regulations issued by you under Title II of the National Housing Act.

The undersigned further agrees that immediately upon the granting by you of the insurance herein applied for, all of the terms and conditions subject to which such insurance may be granted, shall be and become a contract between the undersigned and you, which shall be binding upon and inure to the benefit of its and your successors.

Enclosed is a check of the undersigned for an amount which has been computed in accordance with the Administrative Rules requiring a rate of three dollars (\$3) per thousand dollars (\$1,000) of the principal amount of the loan to be insured, but in no event for an amount less than ten dollars (\$10), such payment to represent reimbursement for the costs of appraisal by the Administrator. It is understood that should this application be rejected by you as a result of preliminary examination, such sum will be returned by you to the undersigned.

The undersigned represents that to the best of its knowledge and belief no statement made and no information contained in this application, in the Mortgagors' Statement, or in the Mortgagors' Property Description, executed in connection with this loan, is in any respect untrue, incorrect, or incomplete.

IN WITNESS WHEREOF, the undersigned has caused this application to be executed and its corporate seal to be hereto affixed by its proper officers, thereunto duly authorized, this 30th day of October, 19 39

[CORPORATE SEAL]

NATIONAL LIFE INSURANCE COMPANY
(Mortgagee)

44 East Broad Street, Columbus, Ohio
(Address)

ATTEST:

By _____

(Name and title of officer)

(Name and title of officer)

**MORTGAGORS' STATEMENT
DATA**

EXISTING CONSTRUCTION (completed building)

Date purchased purchase pending - contract attached

Price paid, \$ 10,000.00

NEW YORK, N. Y.

GOVERNMENT'S EXHIBIT 7

73211

MOI' LANCORS' STATEMENT—Continued LIENS

The following is a list of all mortgage and other lien indebtedness, other than taxes or assessments outstanding against the property offered as security for the loan applied for:

Name of Holder	Address of Holder	Date of Mortgage or Lien	Original Amount	Present Unpaid Balance	Rate of Interest	Maturity Date
Standard S. & L. Co.	Columbus, Ohio	Oct. 1938	\$,500.00	\$,500.00	6%	Oct. 1939

Are principal and interest payments on the above lien(s) current? Yes If not, state amount(s) in default None
(Yes or no)

PERSONAL HISTORY

A. Employment—☐ Self; ☒ Other.

(1) Name of employer Buckeye Tailoring Co.
(2) Address of employer 180 East Long Street Telephone No. MA-3586
(3) Employer's business Tailors (4) Position occupied with employer Manager
(5) Name and title of superior None
(6) Number of years in present employment 20 years

B. Life insurance record—

(a) Total amount in force, \$ 25,000.00 Cash surrender value \$ 2,500.00
(b) Less loans on policies 500.00
(c) Net value of policies \$ 2,000.00

C. Mortgagor's dependents—Number 3 Age Wife-39 Age 11 Age 13 Age Age

PERSONAL FINANCIAL STATEMENTS

(Combined statements of mortgagors, including contributions by other members of the family. Corporate mortgagors must attach a current financial and operating statement)

I. PROPERTY

A. Property owned—

(1) Bank accounts On hand \$ 150.00
Shiars Check with (Name of bank)
(2) Other savings Nat'l Life Ins. Co. 2000.00
(Name of depository)
(3) Investments—
(a) Net worth in mortgagor's business 2000.00
(b) Marketable securities (present market value)
Household Goods - 1500; Auto 650;
(c) Other investments Life Ins. 2,500 4650.00
(4) Real estate (do not include property on which this loan is applied for if purchase is pending)—
(a)
(Mortgage)
\$400 - Paid to Zimmerman
(Address of mortgage)

(Type of property) (Value) (Mortgage) (Equity)
208 So. Stanwood Road
(Address of property)
(b)
(Mortgage)

(Address of mortgage)

(Type of property) (Value) (Mortgage) (Equity)

(Address of property)
(c)
(Mortgage)

(Address of mortgage)

II. INCOME

A. Annual income—
(Statements from professional and business men must show net income after deductions of business expense and overhead.)

(1) Salary or compensation for the year \$ 3,120.00
(2) Total rents None
Less—
(a) Interest None
(b) Taxes None
(c) Maintenance None
Total of a, b, and c \$ None
Total net rent
(3) Income from other sources (name sources)—
(a) Life Ins. Policy - Average 110.00
Dividends
(b)
Total income \$ 3,230.00

B. Annual charges against personal income—

(Do not include charges against property securing loan applied for)

(1) Taxes on personal property None \$
(2) Income taxes None
(3) Annual premium on life insurance 480.00
(4) (SEE DIVIDENDS ABOVE)

Latham 500P
 Deemgar 400P
 Reinhard 400P
 by pliff. Atty.
 Daily Reporter 35P
 Ohio State J. 11 75P

J. P. Muni. Ct. Clk.
 Coma. Bailiff
 Trans. Paid by
 Wit. B. Pg.

J. P. Wit.
 Muni. Ct. Witness

10/13/39 Recd H.C.

265 Bal of acct in the
 Case of Arthur J. Guler vs
 O.W. Beath

COSTS IN CASE	
AMT.	61.40
PAID BY	H.C.
DATE:	2-15-37
J. ARTHUR VORER	H. Smith
Clerk	Deputy

21 Motion & Memo filed.
 21 Wm. P. Zinn & Co. apptd. Rec. as per entry. Bond \$300 No. 3, 9 Ra.
 21 Bond filed. Bk. page
 22 Amended Pgt of Plaintiff filed Copy 2
 22 Writ of Habeas Corpus of Salomon no filed
 22 Writ of Entry of Possession of the
 Prudential Bldg filed
 Sept 15 Report of Receiver confirmed, In-
 structions to Receiver, Receiver r to
 Bondsmen released & discharged, as
 per entry 320404 Ra
 1937 Jun 11 1st 2nd & final account of Receiver filed
 Judgment awarded Plff from Deft
 Frances F. Friedberg & David Friedberg
 sum of \$9390.11 Costs, Friedberg's
 sale ordered, as entry 327489 Ra
 1937 " 11 prece filed Certificate of judgment
 issued to Clerk of Franklin County 6-11-37
 4-15-38
 1937 Jan 15 prece filed Order of sale, issued
 to Sheriff of Franklin County 6-15-37

July 24 Copy of land appraisement filed, property
 appraised at \$2000.00
 Sep 8 Confirmation, deed distribution, deficiency
 judgment due Plff from Deft Frances F.
 David Friedberg, sum of \$3570.38 with interest,
 Execution ordered, as per Entry 328382 Ra
 Continued on Page 22

SHERIFF'S RETURN

FEES

Recd. this writ July 21, 1936 at 11:00 A.M. and pursuant to its command, on July 22,
 1936 I served the within named Pauline Barton and on July 27, 1936 I served the within
 named Frances F. Friedberg and David Friedberg, by leaving for each of them at their
 usual place of residence, a true and certified copy of this writ with all the endorse-
 ments thereon.

Ross E. Anderson, Shff. Franklin Co. 8 05

8/21/37
 RECORDED IN BOOK
 635 Page 340
 7474

Order of sale
 To H.C. & L.C. property sold
 \$462.60
 JACOB E. SANDUSKY, Sheriff

8/19/39. Received this writ 8/17/39 at 9 o'clock A.M. and pursuant
 to its command for want of goods or chattels land and
 tenements upon which to levy this writ returned nothing
 found.
 Jacob E. Sandusky Shff.
 A.A. Hughes Dpty

Continued on Page

[fol. 1249] GOVERNMENT'S EXHIBIT 8-A

September 6, 1939.

(Carbon copy.)

Mr. Edward T. Lombardo,
Attorney at Law,
A. I. U. Building,
Columbus, Ohio.

Re: HOLC v. Friedberg, No. 149,916

Dear Mr. Lombardo:

Pursuant to our telephone conversation of yesterday, we have had our client prepare a financial statement of the Buckeye Tailoring Company, by which company he is employed. Copy of this statement is enclosed herewith for the information of the Corporation. Included in the accounts receivable item is the sum of \$253.00, for which Mr. Friedberg is indebted to his company. This represents an accumulation of advances made to him over a period of years and which he has not been able to repay because of burdensome extraordinary expenses resulting from the illness of his wife and other troubles.

A cursory examination of this statement will readily convince any one, even though not versed in matters of finance, that the company is on the rocks and practically on the verge of bankruptcy. So far as we are informed, Mr. Friedberg's only asset is his potential earning capacity so long as this company continues operation. He has a family consisting of several children and a wife who has been ill for many years. We are informed that she is even now in the care of a doctor, and Mr. Friedberg is required to pay out substantial amounts every month for doctor bills. If Mr. Friedberg is constantly annoyed and harassed by garnishment proceedings, such a condition is bound to depreciate his value to the company and will result in the liquidation of the company that much sooner.

Mr. Friedberg feels that he has been imposed upon in that one of the officers of the HOLC had assured him that no action would be taken in connection with any deficiency and that he need not worry about it. He is absolutely

without funds with which to make any kind of a settlement, but, in order to get the matter behind him and to enable him to devote his undivided energies to his work, he is willing to make an effort to somehow obtain the sum of \$100.00 from his friends or relatives in order to settle this claim. This amount represents approximately what it would cost him to go through bankruptcy.

Please submit this proposition to your client and let me hear from you at your earliest convenience.

Very truly yours, Robert L. Mellman.

RLM:DL

[fol. 1250] GOVERNMENT'S EXHIBIT 8-B

(Original letter.)

August 23, 1939.

Schanfarber & Schanfarber,
150 E. Broad St.,
Columbus, Ohio.
Attn.: Mr. Robt. Mellman.

Dear Mr. Mellman:

I was greatly surprised to have been informed today that an execution of judgment is being attempted in connection with the deficiency obtained by the H.O.L.C. through foreclosure of #131 N. Nelson Rd.

You will recall the manner in which this foreclosure was consummated. I fought to retain this property in which I lived about 7 years and had practically all of my life's savings invested—close to \$5,000.00. Due to the lingering and serious illness of my wife I was compelled to accept the H.O.L.C.'s assistance and when I could not meet the required payments I even agreed to live in an actual slum district temporarily if the H.O.L.C. would permit me to rent out my home, which met with their approval as the rentals would meet the required payments.

I moved out as I succeeded in getting a tenant on a 3 year lease basis for a rental that would satisfy the payments. No sooner than this was done the H.O.L.C. appointed a receiver and started foreclosure proceedings.

This action disturbed the tenant who threatened to move unless the receiver took a lesser rental, which they accepted and also being in the real estate business the receiver started showing the leasor other property. The result was that the tenant moved. This testimony was brought out in a trial during which time I sued the leasor for breach of contract. I resented the manner in which I was being treated and I felt my investment was being jeopardized. However, my frustrations were of no avail.

I cannot understand why I should now be tormented with a judgment. My investment in this house representing my life's savings has been wiped out due to the irregularities in handling my property. If there would have been proper coordination with dealings of same at that time, this property would have in all probabilities been taking care of itself. While the explanation given me for the bungling of this matter was that it was due to the "widespread ramification of the operation of the company" causing errors, this mistake was a very costly one to me.

At present, I am striving desperately to keep home and family together, to make ends meet and keep my self respect. It is taking a good part of my salary for doctors and medicines as I am compelled to pay out from \$12.00 to \$15.00 per month regularly for medicines and twice a week [fol 1251] to doctors. My wife's condition is due to a serious operation and the climatic conditions are no help to her. I must live out of the congested area causing transportation expense to my work. In addition, I have an invalid mother living in the east that is constantly in need of medical aid and nurses and it is necessary for me to contribute weekly as much as I can spare.

The concern I am connected with has been losing ground steadily in recent years and its present status is a matter of time. They are in no position to assist me and am now indebted to them.

I feel that this embarrassment should have been spared me in view of my having been the victim of conditions not due to any fault of mine and under the circumstances consider myself wholly justified in asking for a cancellation of this judgment.

Sincerely yours, (S.) D. F. Friedberg.

(736 1252)

THE BUCKEYE STATE BUILDING AND LOAN CO.
COLUMBUS, OHIO

BB-B 8714-14 P

ACME 27470-6

DATE PAID	PAID TO	AMOUNT	DATE PAID	PAID TO	AMOUNT
5-2-41	5-2-42	2 00			
6-15-42	5-2-43	2 00			
7-16-43	5-2-44	2 00			
7-26-44	5-2-45	2 00			

Columbus, Ohio, May 2 1945

Received from The Buckeye State Building and Loan Company a receipt for rental paid for Safe No.
in the vault of said Company which is leased by us subject to all the rules and regulations of said Company as
endorsed on said receipt and also, in the event of the death or legal disability of either of us, subject to all legal
restrictions including all inheritance and succession laws both State and Federal, to all of which the undersigned
hereby assent and agree.

We also agree to rent and hold the said Safe No. 4694 or any substitution thereof, as joint tenants.

We also acknowledge that we are joint renters and either renter has access to and full power and authority to
relinquish said safe or substitute any safe in its stead.

We hereby acknowledge having received two (2) keys to said safe.

SIGNATURE

F.F. Friedberg (Mrs.)

ADDRESS

779 S. Cassingham Rd

SIGNATURE

x D. Friedberg

ADDRESS

208 S. Stanwood Rd. Berley

CHANGES OF
ADDRESS

EYES	OK
HAIR	
AGE	
FIGURE	med
EYES	OK
HAIR	
AGE	
FIGURE	5-10

Surrendered April 12, 1945

4694 - Mrs. F.F. or David Friedberg

ADDRESS	ANNUAL RENTAL
	2 00
BOX NUMBER	RENTER
4694	Friedberg, Mrs. F.F.
ANNUAL RENTAL DUE	
JAN. FEB. MAR. APR. MAY JUN. JUL. AUG. SEP. OCT. NOV. DEC.	
	2
BOX NUMBER	RENTER
4694	Friedberg, Mrs. F.F. or David

THE CONTENTS OF SAFE NO. 4694 IN THE VAULT OF THE BUCKEYE STATE BUILDING AND
LOAN CO. BEING REMOVED, THE SAID SAFE WITH 2 KEYS IS SURRENDERED BY US. ALL LIABILITY
OF SAID COMPANY UNDER LEASE OF SAFE IS HEREBY RELEASED BY THE UNDERSIGNED.

WITNESSED BY

x Mrs. F.F. Friedberg

REMARKS

Count with David

7-5-43

7/11/44

↑
Notation o
contained

GOVERNMENT'S EXHIBIT 12-A

(P. 737)

Safe No. 4694 has this day been
opened by
Name Mr. F.F. Friedberg
Name _____
Name _____
Attendant dy Room 9

FORM NO 11-48 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by
Name Mr. F.F. Friedberg
Name _____
Name _____
Attendant _____ Room _____

FORM NO 11-48 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by
Name Mr. F.F. Friedberg
Name _____
Name _____
Attendant _____ Room MG

FORM NO 11-48 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by
Name Mr. F.F. Friedberg
Name _____
Name _____
Attendant _____ Room _____

FORM NO 11-48 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by
Name Mr. F.F. Friedberg
Name _____
Name _____
Attendant _____ Room 8

FORM NO 11-48 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by
Name Mr. F.F. Friedberg
Name _____
Name _____
Attendant _____ Room 8

FORM NO 11-48 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by
Name Mr. F.F. Friedberg
Name _____
Name _____
Attendant _____ Room 8

FORM NO 11-48 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by
Name Mr. F.F. Friedberg
Name _____
Name _____
Attendant Per Room 8

FORM NO 11-48 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

GOVERNMENT'S EXHIBIT 12-A

(P. 737)
1253

Enclosed is a check of the undersigned for an amount which has been computed in accordance with the Administrative Rules requiring a rate of three dollars (\$3) per thousand dollars (\$1,000) of the principal amount of the loan to be insured, but in no event for an amount less than ten dollars (\$10), such payment to represent reimbursement for the costs of appraisal by the Administrator. It is understood that should this application be rejected by you as a result of preliminary examination, such sum will be returned by you to the undersigned.

The undersigned represents that to the best of its knowledge and belief no statement made and no information contained in this application, in the Mortgagors' Statement, or in the Mortgagors' Property Description, executed in connection with this loan, is in any respect untrue, incorrect, or incomplete.

IN WITNESS WHEREOF, the undersigned has caused this application to be executed and its corporate seal to be hereto affixed by its proper officers, thereunto duly authorized, this 30th day of October, 19 39

[CORPORATE SEAL]

NATIONAL LIFE INSURANCE COMPANY

(Mortgagee)

44 East Broad Street, Columbus, Ohio

(Address)

ATTEST:

By

(Name and title of officer)

(Name and title of officer)

MORTGAGORS' STATEMENT DATA

EXISTING CONSTRUCTION (completed building)

Date purchased purchase pending - contract attached Price paid, \$ 10,000.00
From whom purchased Geo. Zimmerman 865 Walton Ave., Bronx, New York.
(Name) (Address and telephone number)

Construction of dwelling { was completed more than ONE YEAR prior to the date of this application.
was not

NEW CONSTRUCTION (under construction ☐; proposed construction ☐)

Date purchased (land) Purchase price, \$ Unpaid balance, \$ Due date

From whom purchased?
(Name) (Address and telephone number)

Date construction was started or is to be started
Estimated cost of construction, including main building, outbuildings, walks, driveways, grading, etc., on basis of contractor's bid (copies of which are submitted herewith), plus architect's fee, if any, exclusive of land cost, \$

Name of contractor Address Phone

Proposed sale price of property including land, buildings, and all improvements (if house was completed within past year or is to be built for sale), \$

If the mortgage loan applied for is being given as a part of the purchase price of this property (copy of purchase agreement submitted herewith) state amount of cash paid in addition to the mortgage involved in this transaction; in lieu of cash, give complete details of how the property is being acquired.

Amount already paid, \$ 400.00 Date 9-22-39 To whom Geo. Zimmerman

Amount to be paid, \$ 600.00 Date Open closing To whom Geo. Zimmerman

In whose name is title of record? George and Henrietta Zimmerman Bronx, New York
(Name) (Address)

Do you intend to occupy, rent, or sell this property? Occupy as a residence.

Have you previously applied for an insured mortgage loan upon this property? Yes Any other property? No
(Yes or no) (Yes or no)

If so, to whom?
(Name and address of lending institution)

Do you intend to incur any indebtedness, other than the mortgage loan applied for, for any purpose connected with this transaction, including the payment of any initial charges or financing the repair or completion of the property? No
(Yes or no)

Is there an existing mortgage on the property described herein held by a mortgagee other than the mortgagee submitting the above application? Yes
(Yes or no)

(If the answer to this question is Yes, "Refinancing Certificate" appearing on the reverse side of the last page of this application must be signed by the mortgagor.)

STATE OF OHIO WITH (Name of bank) **Nat'l Life Ins. Co. 2000.00**
 (2) Other savings (Name of depository)
 (3) Investments—
 (a) Net worth in mortgagor's business = **2000.00**
 (b) Marketable securities (present market value)
Household Goods - 1500; Auto 650;
 (c) Other investments **Life Ins. 2,500 4650.00**
 (4) Real estate (do not include property on which this loan is applied for if purchase is pending)—
 (a) ————
 (Mortgage)
\$400 - Paid to Zimmerman
 (Address of mortgage)
 ————
 (Type of property) (Value) (Mortgage) (Equity)
208 So. Starwood Road
 (Address of property)
 (b) ————
 (Mortgage)
 (Address of mortgage)
 (Type of property) (Value) (Mortgage) (Equity)
 (Address of property)
 (c) ————
 (Mortgage)
 (Address of mortgage)
 (Type of property) (Value) (Mortgage) (Equity)
 (Address of property)
 Total equity **\$ 400.00**
 (5) Total value of all property **\$ 9200.00**
 B. Amounts owed—
 (Do not include mortgages listed above)
 (1) Accounts payable **\$ None**
 (2) Notes payable
 Due date **1939** Amount, **\$ 500.00**
Life Insurance Loan
 Due date ———— Amount ————
 Total notes payable **\$ 500.00**
 (3) Total amounts owed **\$ 500.00**

tions of business expense and overhead.
 (1) ~~Salary~~ or compensation for the year **\$ 3,120.00**
 (2) Total rents **\$ None**
 Less—
 (a) Interest **\$ None**
 (b) Taxes **None**
 (c) Maintenance **None**
 Total of a, b, and c **\$ None**
 Total net rent **\$**
 (3) Income from other sources (name sources)—
 (a) **Life Ins. Policy - Average 110.00**
Dividends
 (b) ————
 Total income **\$ 3,230.00**
 B. Annual charges against personal income—
 (Do not include charges against property securing loan applied for)
 (1) Taxes on personal property **None \$**
 (2) Income taxes **None**
 (3) Annual premium on life insurance **480.00**
(SEE DIVIDENDS ABOVE)
 (4) Annual payments for installment purchases
 (5) Annual payments on other loans
 (6) Previous annual housing expenses:
 (a) ~~Mortgage~~ rent **\$ 900.00**
 (b) Heat **50.00**
 (c) Taxes **None**
 (d) Maintenance **None**
 Total annual expense **\$ 950.00**
 Total charges against income **1,430.00**
 C. Net amount of earnings available for living and other necessary expenses **\$ 2,800.00**

WARNING

"Sec. 511 (a) National Housing Act. Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Federal Housing Administration for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by the said Administration, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of the said Administration under this Act, makes, passes, utters, or publishes, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged or counterfeited, or willfully overvalues any security, asset, or income, shall be punished by a fine of not more than \$3,000 or by imprisonment for not more than 2 years, or both."

This Mortgagors' Statement and the Mortgagors' Property Description submitted herewith are made by the undersigned for the purpose of obtaining a mortgage loan to be insured under the provisions of Title II of the National Housing Act, and the undersigned hereby represent that to the best of their knowledge and belief, the statements, information, and descriptions contained herein are in all respects, true, correct, and complete. The Administrator may verify the statements contained herein by communicating with any of the persons or institutions named above.

(Signed) _____

48
(Age)

Date **October 20, 1939**

(Mortgagors)

(Age)

NOTE.—Personal history and personal financial statements will otherwise be treated as confidential information by the mortgagee and the Federal Housing Administration.

(2)

10-3000

Safe No. 4694 has this day been
opened by

Name J. F. Friesberg

Name _____

Attendant _____

Room AM

FORM NO 3-44 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by

Name Frances F Friesberg

Name _____

Attendant _____

Room AM

FORM NO 3-44 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by

Name Mrs F.F. Friesberg

Name _____

Attendant Weldon

Room _____

FORM NO 3-44 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by

Name Mrs F.F. Friesberg

Name _____

Attendant _____

Room _____

FORM NO 3-44 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by

Name F. F. Friesberg
Mrs F.F. Friesberg

Name _____

Attendant _____

Room _____

FORM NO 11-42 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by

Name Mrs F.F. Friesberg
F. F. Friesberg

Name 1350 West Ave
Over

Attendant _____

Room _____

FORM NO 11-42 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by

Name Mrs F.F. Friesberg

Name _____

Attendant Dy

Room _____

FORM NO 11-42 SAFE DEPOSIT DEPARTMENT
The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Reverse side of above slip.

Have a return
ticket signed &
file in place of
this one
(name)

GOVERNMENT'S EXHIBIT 12-A

(p. 738)
1254

739
Safe No. 739 has this day been
opened by

Name [Signature]

Name [Signature]

Attendant [Signature]

Time Opened

1945 APR 12 9 01

Room [Signature]

FORM 88 2-44

SAFE DEPOSIT DEPARTMENT

The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by

Name [Signature]

Name _____

Attendant [Signature]

Time Opened

1945 JAN 29 12 17

Room [Signature]

FORM 88 2-44

SAFE DEPOSIT DEPARTMENT

The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

Safe No. 4694 has this day been
opened by

Name [Signature]

Name _____

Attendant [Signature]

Time Opened

1945 JAN 22 12 33

Room [Signature]

FORM 88 2-44

SAFE DEPOSIT DEPARTMENT

The BUCKEYE STATE BUILDING & LOAN Co., Columbus, Ohio

GOVERNMENT'S EXHIBIT 12-A

(1255)

✓ GOVERNMENT'S EXHIBIT 13

3

RENTER

Handler, Frances F or Handler, David

13

1293

SIGNATURES FOR IDENTIFICATION OF PERSONS HAVING RIGHT OF ACCESS TO SAFE NO.

RENTER *Frances F. Handler* DEPUTY *Elaine F. Zinfaney*
 RE-RENTER *David Handler* DEPUTY

DATE	SIGNATURE OF PERSON HAVING ACCESS	WITNESS	TIME
2-7-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
2-9-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
2-15-45	<i>Elaine F. Zinfaney</i>	<i>Ed. [unclear]</i>	
2-20-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
3-2-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
3-13-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
3-27-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
4-2-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
5-1-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
5/15/45	<i>Frances F. Handler</i>	<i>Ed. [unclear]</i>	
5-18-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
5-28-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
5-31-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
6-5-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
6-8-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
6-21-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
7-5-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
7-12-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
9-10-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
10-24-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
11/14/45	<i>Frances F. Handler</i>	<i>Ed. [unclear]</i>	
11-15-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	
11-28-45	<i>David Handler</i>	<i>Ed. [unclear]</i>	

ENTER

GOVERNMENT'S EXHIBIT 13

SAFE NO.

1293

(740)

DATE	SIGNATURE OF PERSON HAVING ACCESS	WITNESS	TIME
4-29-45	David Handley	Ed. S. S.	8:00 am
2-5-45	David Handley	Ed. S. S.	8:00 am
2-14-45	David Handley	Ed. S. S.	8:00 am
12-17-45	David Handley	Ed. S. S.	8:00 am
1-8-46	David Handley	Ed. S. S.	8:00 am
1/1/46	F. F. Handley	Ed. S. S.	8:00 am
2/1/46	Francis F. Handley	Ed. S. S.	8:00 am
2-5-46	David Handley	Ed. S. S.	8:00 am
3-6-46	David Handley	Ed. S. S.	8:00 am
3-18-46	David Handley	Ed. S. S.	8:00 am
3-20-46	David Handley	Ed. S. S.	8:00 am
3-27-46	David Handley	Ed. S. S.	8:00 am
4-17-46	David Handley	Ed. S. S.	8:00 am
4-23-46	David Handley	Ed. S. S.	8:00 am
5-1-46	David Handley	Ed. S. S.	8:00 am
5-14-46	David Handley	Ed. S. S.	8:00 am
5-28-46	David Handley	Ed. S. S.	8:00 am
6-18-46	David Handley	Ed. S. S.	8:00 am
7-2-46	David Handley	Ed. S. S.	8:00 am
7-15-46	David Handley	Ed. S. S.	8:00 am
10-1-46	David Handley	Ed. S. S.	8:00 am
10-23-46	David Handley	Ed. S. S.	8:00 am
11-20-46	David Handley	Ed. S. S.	8:00 am
11-27-46	David Handley	Ed. S. S.	8:00 am
12-17-46	Francis F. Handley	Ed. S. S.	8:00 am
12-30-46	David Handley	Ed. S. S.	8:00 am
1-10-47	David Handley	Ed. S. S.	8:00 am
2/9/47	Francis F. Handley	Ed. S. S.	8:00 am

S. F.F. OF David Friedberg

Rendered April 12, 1945

Friedberg (Mrs)
 ADDRESS *779 S. Cassingham Rd*
 SIGNATURE *D. Friedberg*
 ADDRESS *208 S. Stanwood Rd. Bayley*
 CHANGES OF ADDRESS

HAIR
 AGE
 FIGURE *med*
 EYES *dk*
 HAIR
 AGE
 FIGURE *5-10*

ADDRESS ANNUAL RENTAL *2.00*

BOX NUMBER	RENTER	ANNUAL RENTAL DUE											
		JAN.	FEB.	MAR.	APR.	MAY	JUN.	JUL.	AUG.	SEP.	OCT.	NOV.	DEC.
4694	Friedberg, Mrs. F.F.					2							

BOX NUMBER	RENTER
4694	Friedberg, Mrs. F.F. OF David

THE CONTENTS OF SAFE NO. *4694* COLUMBUS, OHIO *April 12 1945* IN THE VAULT OF THE BUCKEYE STATE BUILDING AND LOAN CO. BEING REMOVED, THE SAID SAFE WITH *2* KEYS IS SURRENDERED BY US. ALL LIABILITY OF SAID COMPANY UNDER LEASE OF SAFE IS HEREBY RELEASED BY THE UNDERSIGNED.

WITNESSED BY *Stenice* *x Mrs F.F. Friedberg*

REMARKS *Court with David*
7-8-43
7/11/44

Notation on envelope which contained slips on following pages.

GOVERNMENT'S EXHIBIT 13

RENTER

Handler, Frances F. or Handler, David
Signature of Elaine F. Friedberg in files

1293

SIGNATURES FOR IDENTIFICATION OF PERSONS HAVING RIGHT OF ACCESS TO SAFE NO.

RENTER

DEPUTY

1945

RENTER

1946

DATE	SIGNATURE OF PERSON HAVING ACCESS	WITNESS	TIME
2-18-47	David Handler	12:00 PM	
3-31-47	David Handler	12:00 PM	
4-10-47	David Handler	12:00 PM	
6-23-47	David Handler	12:00 PM	
7-10-47	Frances F. Handler	12:00 PM	
8-24-47	Frances F. Handler	12:00 PM	
10-10-47	David Handler	12:00 PM	
10-14-47	Frances F. Handler	12:00 PM	
10-16-47	David Handler	12:00 PM	
11-5-47	David Handler	12:00 PM	
11-12-47	David Handler	12:00 PM	
1-15-48	Frances F. Handler	12:00 PM	
1-26-48	David Handler	12:00 PM	
2-25-48	David Handler	12:00 PM	
3-17-48	David Handler	12:00 PM	
5-7-48	David Handler	12:00 PM	
5-7-48	David Handler	12:00 PM	
6-23-48	Frances F. Handler	12:00 PM	
10-11-48	Frances F. Handler	12:00 PM	
11-23-48	David Handler	12:00 PM	
1-4-49	David Handler	12:00 PM	
1-7-49	Frances F. Handler	12:00 PM	
7-11-49	Frances F. Handler	12:00 PM	

G.S.S. OFFICE SUPPLY CO.

THE MARKET EXCHANGE BANK, COLUMBUS, OHIO

GOVERNMENT'S EXHIBIT 13

RENTER

SAFE NO.

1293

(741)

DATE	SIGNATURE OF PERSON HAVING ACCESS	WITNESS	TIME
8-5-49	David Handler	12:00 PM	
9-21-49	David Handler	12:00 PM	
9-28-49	David Handler	12:00 PM	
11-16-49	David Handler	12:00 PM	
12-24-49	David Handler	12:00 PM	
1-4-50	David Handler	12:00 PM	
3-9-50	David Handler	12:00 PM	
5-3-50	David Handler	12:00 PM	
5-29-50	David Handler	12:00 PM	
6-5-50	David Handler	12:00 PM	
6-29-50	David Handler	12:00 PM	
8-24-50	David Handler	12:00 PM	
12-15-50	David Handler	12:00 PM	
12-23-50	David Handler	12:00 PM	
12-16-50	David Handler	12:00 PM	
3-19-51	David Handler	12:00 PM	
3-16-51	David Handler	12:00 PM	
3-21-51	David Handler	12:00 PM	
3-23-51	David Handler	12:00 PM	
7-9-51	David Handler	12:00 PM	
12-3-51	David Handler	12:00 PM	

JOINT SAFE DEPOSIT BOX
CONTENTS TO BE DELIVERED TO EITHER OR SURVIVOR

WE AGREE AND DECLARE THAT contents of Safe Deposit Box now, or hereafter deposited in said Deposit Box, are and shall be our joint property and owned by us as joint tenants with right of survivorship, and not as tenants in common, and upon death of either of us the entire contents of said Deposit Box shall become the absolute property of survivor. The entire contents or any part thereof may be withdrawn by, or on the order of, either of us, or the survivor. It is especially agreed that withdrawal of entire contents or any part thereof shall be binding upon us and upon our heirs, next of kin, assigns, legatees and personal representatives.

James F. Handler
David Vanderlee
2-6-45
DATE

GOVERNMENT'S EXHIBIT 13

2-6-45

Date _____
Rental \$ 5.00
(due annually in advance)

L-E-A-S-E
or
DEPOSIT BOXES

Handler, Frances F or
Handler, David
Lessee _____
Box No. 1293

The Market Exchange Bank of Columbus, Ohio, the lessor, in consideration of the foregoing rental, the receipt of one annual installment of which rental is hereby acknowledged, by these presents lets and leases unto the undersigned lessee, its Safe Deposit Box bearing the above number situated in its Safe Deposit Vault in its Banking House in the City of Columbus, Ohio, for a period of one year from the date of renewal in subsequent terms of one year each, upon the same general covenants, conditions and agreements as herein contained and provided, and in the event that a renewal lease shall not be executed and delivered, then this instrument shall of itself operate as and be held to be a renewal or successive renewals hereof, subject to the right of cancellation herein provided for.

The lessor and the lessee have agreed and hereby do covenant and agree each with the other that said safe is leased subject to the following agreements, conditions, rules and regulations:

1. Satisfactory references must be furnished by strangers upon the application for a safe.
2. The Bank reserves the right to cancel any lease after ten days notice by mail to the address on the records of the bank and a return of the unearned rent for the unexpired term of the lease.
3. Papers should not be examined within the vault but in rooms provided for that purpose. Lessees must remove and replace their boxes themselves. Should an attendant handle a box as an accommodation to the lessee, the bank assumes no liability therefrom.
4. The Bank shall under no circumstances, except as provided in paragraph 10, be considered as bailee, or otherwise in possession of the contents of leased safes, the relation of the bank and the lessee being agreed to be that of landlord and tenant.
5. The lessor of the vaults shall fix the hours for opening and closing the same, and said vaults may be wholly closed upon any National, State or City holiday, or upon any other day when, on account of mobs, unusual crowds, closing of Clearing House Association, acts of God, or for any other reason said lessor shall deem such closing prudent or proper.
6. The Bank shall not be liable in the event that property belonging to one or more persons having joint access to a safe be misappropriated by one or more of those having such access. A rental contract signed by two or more lessees constitutes a separate rental to each and any one shall have access, in the manner provided by law, at the death of the other, or others, free from liability on the part of the Bank for misappropriating, as above. Either may appoint a deputy to have access to or to surrender the safe.
7. The Bank will retain no keys that will open any leased safe, and upon the surrender of said Safe, the keys thereto must be returned immediately to the Bank. Any expense incurred by the Bank in opening or repairing said Safe, or in changing the lock thereon, occasioned by the loss of a key or keys, or failure to deliver the same over at the time of surrender must be paid by the lessee. The lessee shall notify the Bank at once if a key is lost, and the lessor agrees not to impart the number of the Safe nor deliver the key thereto to any one not properly and legally authorized to have access to said Safe.
8. Every lessee of a safe shall give this Bank his signature, and that of his deputy, should he appoint one, upon his lease, and such signature shall be conclusive evidence of the lessee's knowledge of, and assent to the rules and regulations, and this shall, without repetition, apply to all renewals and subsequent leases of safes from this Bank by the same lessee.
9. The responsibility of this bank with regard to property deposited in leased safes, is limited to the diligent and faithful performances of their duty by the employees and officers of the Bank, which care shall consist only of (a) keeping the leased safes in the vault where located when this rental contract is entered into or in one of equal specifications, the door of which vault shall be locked at all times except when officers and employees are present, (b) allowing no person access to the safe, except the lessee, or authorized deputy or attorney in fact having special power to act identification by signature being sufficient, or his legal representative in case of death, insolvency or other disability of the lessee, except as herein expressly stipulated. An unauthorized opening shall not be presumed or inferred from proof of partial or total loss of contents.
10. All rents of safes shall be payable in advance, and if possession of safe rented is not given up, and its keys returned to this Bank at the expiration of the lease, or of its renewal, or upon cancellation by the Bank, then the lessee shall be and remain a tenant at sufferance of this Bank; and shall be debarred from having access to safe at any time at the option of this Bank; and after fifteen days' notice to the lessee by mail, to his place of residence or business, as given by him on the books of this Bank, this Bank shall have the right to forcibly open such safe at the expense of the lessee, in the presence of any two of its officers, and if the contents thereof shall prove of sufficient value, in the estimation of these witnesses, this Bank shall take charge of such contents as a deposit, subject to the payment of all rent that may be accrued, and they shall be so entered among the deposits of this Bank, and subject to its rules and regulations and charges as to deposits; but if the contents shall be thus estimated not of sufficient value for a deposit, this Bank shall have the right to remove them from its vault and shall bear thereafter no further risks thereupon.
11. The Bank reserves the right to alter and amend these conditions, rules, and regulations upon giving reasonable notice thereof to lessee.

In Witness Whereof this lease has been executed in duplicate by the lessor and the lessee at Columbus, Ohio, this 6 day of February 19 45 and the lessee acknowledges receipt of 2 keys to said box.

THE MARKET EXCHANGE BANK

John R. Linn
A. Wayne Friedberg
Elaine F. Friedberg
Frances F. Handler
David Vanderlee
1350 Neil Ave
June 1
Address of Lessee.
2-15-45
Date.
Signature of Deputy.
Address of Deputy.

To The Market Exchange Bank: Columbus, Ohio, _____ 19_____
The within described Safe No. _____ having been duly emptied, the same is hereby surrendered and the within lease cancelled.
Signed in the presence of: _____

[fol. 1259] GOVERNMENT'S EXHIBIT 28

IN THE COURT OF COMMONS' PLEAS, FRANKLIN COUNTY,
OHIO

Case Number 131,822

THE FEDERAL HOME AND MORTGAGE COMPANY, A CORPORATION,
Plaintiff,

vs.

FRANCES F. FRIEDBERG and DAVID P. FRIEDBERG, her husband,
Charles G. Kennaw and Gertrude O. Kennaw, husband
and wife, The Bennett Rental Service, Inc., Defendants

CONFIRMATION OF SALE, ORDER FOR DEED AND DISTRIBUTION—
Filed November 6, 1934

This day this cause came on to be heard on the motion of the plaintiff for confirmation of the sale by the Sheriff made under the former order of this court and upon the plaintiff producing the Sheriff's return of the said sale made under said former order of this court, and the court on careful examination thereof and all of the proceedings of said Sheriff, and the evidence adduced being satisfied that the same have been, in all respects, in conformity to law and the former orders of this court, it is hereby ordered that said proceedings and sale be, and they are hereby approved and confirmed, and it appearing from said Sheriff's return that said Sheriff has sold said real estate described in plaintiff's petition to Real Estate Service, Inc., formerly under the name of The Federal Home and Mortgage Company, the plaintiff herein, for the sum of Thirty-four Hundred Dollars (\$3400.00), it is ordered that said Sheriff, upon [fol. 1260] payment of the purchase price, convey to said purchaser, by good and sufficient deed, the real estate described in said petition, according to law, and a writ of possession is awarded to put purchaser in possession of the premises, and said purchaser is hereby subrogated to all the rights of all the lienholders herein against said premises, including the lien of taxes.

And it is further ordered that the Clerk of this Court cause cancellation of the mortgage recorded at Mortgage

Record 800, page 221, Recorder's Office, Franklin County, Ohio, to be entered upon the records of said mortgage in said Recorder's Office.

And the Court coming now to distribute the proceeds of said sale, amounting to \$3,400.00, it is ordered that the Sheriff pay:

1. To the Clerk of this Court, the costs of this action, amounting to \$72.50
2. To the Treasurer of Franklin County, Ohio, all taxes, assessments, penalties and interest due on said premises having been paid in full to date None
3. To Real Estate Service, Inc., plaintiff herein, on its first mortgage claim, the balance of said proceeds, amounting to \$3,327.50

And it appearing that there is still due the plaintiff, Real Estate Service, Inc., from the defendants, Frances F. Friedberg and David P. Friedberg, her husband, Charles C. Kennaw and Gertrude O. Kennaw, husband and wife, the sum of \$2,220.95, with interest at the rate of six per cent (6%) per annum, from the 25th day of September, 1931, until paid, a deficiency judgment for said sum is hereby awarded the plaintiff against said defendants.

Randall, Judge, J.

[fol. 1261] GOVERNMENT'S EXHIBIT 29

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

No. 143854

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Plaintiff,

vs.

DAVID FRIEDBERG, 131 North Nelson Road, Columbus, Ohio,
FRANCES F. FRIEDBERG, 131 North Nelson Road, Columbus,
Ohio, REAL ESTATE SERVICE, INC., Defendants

AMENDED PETITION—Filed December 11, 1934

Now comes The Prudential Insurance Company of America, and for its amended petition herein says, that it

is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal place of business in the City of Newark, Essex County, New Jersey, and that it is and was at all times hereinafter mentioned authorized to do business in the State of Ohio.

The defendant, Real Estate Service, Inc., is the successor to The Federal Home and Mortgage Company, and is a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal place of business in the City of Columbus, Franklin County, Ohio.

First Cause of Action:

There is due the plaintiff from the defendants David Friedberg and Francis F. Friedberg, the sum of Five Thousand One Hundred Fourteen and 76/100 (\$5,114.76) Dollars, which it claims with interest thereon from the 1st day of March, 1934, at the rate of eight (8) per cent. per [fol. 1262] annum upon one certain promissory note, a true copy of which with all credits and endorsements is in the following words and figures, to-wit:

\$6000.00

Columbus, Ohio, March 11th, 1929.

For value received, I promise to pay to the order of The Prudential Insurance Company of America Six Thousand—Dollars (\$6000.00), with interest thereon from date at the rate of six (6) per cent. per annum; the principal of this note payable in instalments as follows:

Beginning on the first day of April, 1929, and on the first day of each month thereafter, the sum of Thirty and no/100—(\$30.00)—Dollars, and the balance of said principal sum payable on the first day of March, 1934; with interest on the principal sum at the rate of six (6) per cent. per annum, payable as follows: beginning on the first day of April, 1929, and on the first day of each month thereafter, on the balance of said principal sum remaining unpaid on the first day of each month.

All instalments of both principal and interest are payable at the Home Office of The Prudential Insurance Company of America, in Newark, New Jersey, in gold coin of

the United States of America of the present legal standard of weight and fineness, or its equivalent.

Privilege is given to make additional payments on the principal of this note on any interest-payment day; such additional payments shall be not less than one hundred dollars (\$100) at any one payment, and shall be in multiples of the monthly instalment of principal.

Upon failure to pay any instalment of principal or interest when due, the entire principal shall become due and payable at once, without notice, at holder's option.

If any part of the principal or interest of this note is not paid when due, it shall bear interest thereafter at the rate of eight (8) per cent. per annum, payable annually.

This note and interest are secured by a mortgage on real estate, of even date herewith, duly recorded on the Recorder's Office, County of Franklin, State of Ohio.

Francis F. Friedberg, David Friedberg.

There are no endorsements on said note and the following are all of the credits on said note:

[fol. 1263]

<i>Date Paid</i>	<i>Principal</i>	<i>Interest</i>
June 5, 1929	\$30.00	\$30.00
July 8, 1929	30.00	29.85
Aug. 1, 1929	30.00	29.70
Aug. 31, 1929	30.00	29.55
Sept. 4, 1929	30.00	29.40
Oct. 23, 1929	30.00	29.25
Nov. 26, 1929	30.00	29.10
Nov. 26, 1929	30.00	28.95
Nov. 26, 1929	30.00	28.80
Jan. 3, 1930	30.00	28.65
Feb. 8, 1930	30.00	28.50
Mar. 3, 1930	30.00	28.35
Apr. 3, 1930	30.00	28.20
May 6, 1930	30.00	28.05
June 5, 1930	30.00	27.90
Aug. 9, 1930	30.00	27.75
Jan. 31, 1931	30.00	27.60
Jan. 31, 1931	30.00	27.45

<i>Date Paid</i>	<i>Principal</i>	<i>Interest</i>
Jan. 31, 1931	30.00	27.30
Jan. 31, 1931	30.00	27.15
Jan. 31, 1931	30.00	27.00
Jan. 31, 1931	30.00	26.85
Feb. 10, 1931	30.00	26.70
Mar. 10, 1931	30.00	26.55
Apr. 10, 1931	30.00	26.40
June 16, 1931	30.00	26.25
July 18, 1931	30.00	26.10
Aug. 21, 1931	30.00	25.95
Sept. 21, 1931	30.00	25.80
Oct. 19, 1931	30.00	25.65
Nov. 19, 1931	30.00	25.50
Dec. 22, 1931	30.00	25.35
Jan. 26, 1932	30.00	25.20
Feb. 29, 1932	30.00	25.05
Mar. 24, 1932	30.00	24.90
Apr. 30, 1932	30.00	24.75
May 31, 1932	30.00	24.60
July 6, 1932		18.15
July 28, 1932		6.30
July 28, 1932		24.45
July 28, 1932		24.45
Oct. 5, 1932		24.45
Nov. 25, 1932		24.45
Feb. 16, 1933		24.45
June 17, 1933		24.45
June 17, 1933		24.45
July 24, 1933		24.45

[fol. 1264]

Aug. 5, 1933	\$24.45
Sept. 4, 1933	24.45
Jan. 18, 1934	24.45
Mar. 22, 1934	20.00
Apr. 11, 1934	4.45
Apr. 11, 1934	5.55
Apr. 28, 1934	18.90
Apr. 28, 1934	1.10

Said note matured on March 1, 1934, and has not been paid. There remains due and-unpaid on said note the sum of Five Thousand One Hundred Fourteen and 76/100 (\$5,114.76) Dollars, with interest thereon at the rate of eight (8) per cent. per annum, from March 1, 1934, which the defendants David Friedberg and Francis F. Friedberg have failed and refused to pay.

Second Cause of Action:

The plaintiff for its second cause of action adopts each and all of the allegations set forth in its first cause of action, as if fully re-written herein and says that on the 11th day of March, 1929, said defendants, Francis F. Friedberg and David Friedberg, her husband who released all his right and title of dower in the premises, duly executed and delivered to this plaintiff, their certain mortgage deed in order to secure the payment of the sum of Six Thousand and no/100 (\$6000.00) Dollars, represented by said promissory note in the first cause of action set forth and the interest which should accrue thereon and by said mortgage deed conveyed to this plaintiff the following described premises, situated in the City of Columbus, County of Franklin, and State of Ohio, and bounded and described as follows, to-wit:

Being Lot No. Three (3) of C. A. Thomas' Moler Street Addition to said City, as the same is numbered [fol. 1265] and delineated upon the recorded plat thereof, of record on Plat Book No. 10, page 236, Recorder's Office, Franklin County, Ohio.

The plaintiff further says that said mortgage was duly filed with the Recorder of Franklin County, Ohio, for record on the 13th day of March, 1929, and was by said Recorder duly recorded on the 13th day of March, 1929, in the mortgage records in his office in Volume 797, page 107, and that said mortgage has been since the 13th day of March, 1929, and still is a valid and subsisting lien, and the first and best lien on said premises.

The said mortgage contains a provision that if the said Francis F. Friedberg and David Friedberg should promptly pay to this plaintiff the said promissory note,

set forth in said first cause of action, together with interest accrued thereon according to the tenor and effect thereof, when and as the same became due, then said mortgage should be void. Otherwise the same should remain in full force and virtue in law.

Plaintiff further says that said mortgage deed contains a provision that this plaintiff shall have the right to pay all assessments or taxes which may be due and unpaid by the mortgagor and that the amounts so paid shall then be added to the principal debt named therein and bear interest at the rate of eight (8) per cent. per annum, payable annually, from the date of such payment and be secured by said mortgage, the same as the said principal sum and interest thereon. Plaintiff says that on the 4th day of September, 1934, this plaintiff paid the sum of Seventy-six and 19/100 (\$76.19) Dollars, to the Treasurer of Franklin County, Ohio, for taxes and assessments against the real estate above described and the said sum of Seventy-six and 19/100 (\$76.19) Dollars, with interest thereon at the [fol. 1266] rate of eight (8) per cent. per annum, from September 4, 1934, is due it under the terms of said mortgage.

The plaintiff further says that neither of the said defendants, David Friedberg or Francis F. Friedberg nor anyone for them have paid the sum remaining due upon said promissory note set forth in said mortgage and that the amount of said mortgage, to-wit: Five Thousand One Hundred Fourteen and 76/100 (\$5,114.76) Dollars, together with interest thereon from the 1st day of March, 1934, at the rate of eight (8) per cent. per annum, and the sum of Seventy-six and 19/100 (\$76.19) Dollars, with interest thereon from the 4th day of September, 1934, at the rate of eight (8) per cent. per annum, is now due and unpaid; that said mortgage deed has become absolute and that this plaintiff is entitled to have the same foreclosed.

Plaintiff further says that David Friedberg is the present owner of said premises, and that the defendant Real Estate Service Inc. as the successor of The Federal Home and Mortgage Company has or claims to have some lien or interest in said premises, the exact nature of which is unknown to the plaintiff, but the plaintiff avers that said

alleged claim of said defendant is inferior in right and priority to the mortgage lien of this plaintiff upon and against said premises.

Plaintiff further says that said mortgage contains a provision that in the event of non-payment of any installment of principal or interest when due according to the tenor and effect of the note described in the first cause of action herein, then without notice or demand, the rents of the real estate herein described shall immediately accrue [fol. 1267] to the benefit of the plaintiff herein, and the occupant or occupants of said real estate shall then pay rent to the said plaintiff herein. Plaintiff says that the above described real estate is probably insufficient to discharge the mortgage debt.

Wherefore the plaintiff prays that it may have judgment against the defendants, David Friedberg and Francis F. Friedberg, for the sum of Five Thousand One Hundred Fourteen and 76/100 (\$5,114.76) Dollars, with interest thereon at the rate of eight (8) per cent. per annum, from March 1, 1934, and for the sum of Seventy-six and 19/100 (\$76.19) Dollars, with interest thereon at the rate of eight (8) per cent. per annum, from September 4, 1934; that each and all the defendants in this action be required to set up whatever right, interest or lien they may have in or upon said premises, or be forever barred from asserting the same; that the court may find and determine the amount which may be due this plaintiff from the defendants, David Friedberg and Francis F. Friedberg, upon said mortgage indebtedness; that said mortgage set out in the second cause of action herein may be foreclosed; that the premises described in the second cause of action herein may be sold as upon execution and the proceeds derived therefrom may be applied to the payment of the plaintiff's mortgage indebtedness hereinabove set forth and that should there be insufficient sums realized from said sale to pay in full the said judgment of the plaintiff, that execution issue against the said David Friedberg and Francis F. Friedberg for said unpaid balance.

Plaintiff further prays to the court that a receiver be appointed forthwith to collect the rents and manage said property during the pendency of this cause and for such

other relief to which plaintiff may be entitled at law or [fol. 1268] in equity.

Clarence B. Folkerth, Attorney for plaintiff.

STATE OF OHIO,

Franklin County, ss:

Clarence B. Folkerth, being first duly sworn, says that he is the Attorney for The Prudential Insurance Company of America of Newark, New Jersey, and that said plaintiff is a non-resident corporation and that the above pleading is founded upon a written instrument for the payment of money secured by mortgage, which promissory note and mortgage are now in affiant's possession, and that the facts stated and allegations contained in the foregoing amended petition are true as he verily believes.

Clarence B. Folkerth.

Sworn to and subscribed before me by Clarence B. Folkerth, this 1st day of December, 1934.

Justin H. Folkerth, Notary Public, Franklin County, Ohio.

Copy handed to Schanfarber & Schanfarber, Attorneys for Defts.

CBF.

[fol. 1269] GOVERNMENT'S EXHIBIT 29

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

No. 143854

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Plaintiff,

vs.

DAVID FRIEDBERG, ET AL., Defendants

ENTRY—Filed December 31, 1934

This cause came on to be heard upon the amended petition of The Prudential Insurance Company of America, plain-

tiff herein, and the evidence. The court finds that the defendants, David Friedberg and Frances F. Friedberg, have each been duly and legally served with summons on the petition herein and that the defendant, Real Estate Service, Inc., the successor of The Federal Loan and Mortgage Company, has waived the issuing and service of summons on the amended petition and has voluntarily entered its appearance in this action. The court further finds that the defendants, David Friedberg, Frances F. Friedberg and Real Estate Service, Inc., are each in default for answer or demurrer to said amended petition and have therefore confessed the allegations of the same to be true.

Whereupon the court finds upon the evidence that there is due The Prudential Insurance Company of America, plaintiff herein, from the defendants, David Friedberg and Frances F. Friedberg, upon the note and mortgage set out in the amended petition, the sum of Five Thousand One Hundred Fourteen and 76/100 (\$5,114.76) Dollars with interest thereon from March 1, 1934 at the rate of eight (8) per cent per annum, and the sum of Seventy-Six and 19/100 (\$76.19) Dollars with interest thereon from September 4, 1934 at the rate of eight (8) per cent per annum. It is therefore ordered, adjudged and decreed that The Prudential Insurance Company of America, plaintiff herein, have and recover from the defendants, David Friedberg and Frances F. Friedberg, the sum of Five Thousand Five Hundred Thirty-Three and 91/100 (\$5,533.91) Dollars with interest thereon from the date of this entry until paid at the rate of eight (8) per cent per annum, and for its costs herein expended.

The court further finds that in order to secure the payment of the note set out in the petition the defendants, David Friedberg and Frances F. Friedberg, husband and wife, executed and delivered to The Prudential Insurance Company of America their certain mortgage deed set out in the amended petition on the real estate therein described and that said mortgage was filed for record as in the said amended petition alleged; that the conditions of said mortgage have been broken, and that the same has become absolute, and that said mortgage is a valid and subsisting lien

on and against said premises prior to all other liens excepting taxes and assessments and the costs of this case.

It is further ordered and adjudged that unless within three days from the date of this entry the defendant, David Friedberg and Frances F. Friedberg, pay or cause to be paid to the Clerk of this court the costs of this case and to The Prudential Insurance Company of America, plaintiff herein, the said sum of Five Thousand Five Hundred Thirty-Three and 91/100 (\$5,533.91) Dollars together with [fol. 1271] interest thereon as heretofore found to be due it, the equity of redemption of the defendants, David Friedberg and Frances F. Friedberg, in and to said real estate described in the amended petition be foreclosed, that said premises be sold as upon execution, and that an order issue to the Sheriff of Franklin County, Ohio, directing him to appraise, advertise and sell the said real estate as upon execution and to report his proceedings to this court for further order.

It is further ordered, at request of all counsel, that the notice of said sale be published in The Daily Reporter, a newspaper of general circulation in Franklin County, Ohio.

(S.) Randall, J.

[fol. 1272]

GOVERNMENT'S EXHIBIT 29

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

No. 143,854

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Plaintiff,

VS.

DAVID FRIEDBERG, ET AL., Defendants

MOTION—Filed March 4, 1935.

Now come the defendants, David Friedberg and Frances F. Friedberg, and represent to the Court that a judgment has been taken against them in the within action in the sum of Five Thousand Five Hundred Thirty-three Dollars and Ninety-one Cents (\$5,533.91), together with interest

and costs, and for foreclosure of the premises described in plaintiff's amended petition; that the premises have been appraised at Four Thousand Five Hundred Dollars (\$4,500.) and have been ordered sold on the 9th day of March, 1935.

Defendants further represent to the Court that the property in question is a double house; that both sides are rented at a rental of Twenty Dollars (\$20.) per month; that a receiver has been appointed to collect said rents and is collecting same, and that the income therefrom is sufficient to pay current taxes and interest.

Defendants further represent that said real estate is worth in excess of the aforementioned judgment, but that if it is sold on the present depressed market it will bring [fol. 1273] far less than said judgment.

Wherefore, defendant moves the Court for an order postponing the aforementioned sale of said premises, in accordance with the provisions of Section 11588 of the Ohio General Code, known as the Best Act.

Respectfully submitted, (S.) Schanfarber and Schanfarber, Attorneys for Defendants, David Friedberg and Frances F. Friedberg.

Copy of above motion received Mch. 4, 1935. Clarence B. Folkerth, Atty for Pltff.

[fol. 1274] GOVERNMENT'S EXHIBIT 29

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

No. 143854

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Plaintiff,

VS.

DAVID FRIEDBERG, ET AL., Defendants

ENTRY—Filed March 12, 1935.

This matter came on for hearing upon the motion of the defendant to postpone the sale of the premises described in

the petition under the provisions of Section 11588 of the General Code of Ohio; and the court, after hearing had, announced that the sale would be postponed for a period of six (6) months provided the defendant pay the costs already incurred in advertising the premises for sale amounting to Ten and 25/100 (\$10.25) Dollars, the current taxes now due and payable, and the sum of Ten (\$10.00) Dollars per month to the plaintiff during said six (6) months period. The defendant by his counsel thereupon announced in open court that he would not be able to comply with those terms. Whereupon the court overruled defendant's motion to postpone said sale.

(S.) Randall, J.

[fol. 1275] GOVERNMENT'S EXHIBIT 29

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

No. 143854

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Plaintiff,

VS.—

DAVID FRIEDBERG, ET AL., Defendants

ENTRY—Filed March 14, 1935.

And now this cause came on to be heard upon the motion of the plaintiff and upon the production of the return of the Sheriff of Franklin County, Ohio, of the sale of real estate made under the former order of this court; and this court, on examination of the proceedings and sale of said Sheriff, being satisfied that the same have been in all respects in conformity to law and the orders of the court, it is ordered that the said proceedings and sale be, and they hereby are, approved and confirmed.

And it is ordered that the said Sheriff convey to the purchaser, The Prudential Insurance Company of America, by deed in fee simple the land and tenements so sold and described in the petition; and the said purchaser is hereby subrogated to all of the rights of the lien holders in said

premises insofar as they may be paid herein for the protection of the title; and a writ of possession is hereby awarded to put said purchaser in possession of said premises.

And the Clerk of this court is hereby authorized and directed to enter cancellation of the mortgage against said [fol. 1276] real estate upon the margins of the records thereof as follows:

Mortgage Record 797, page 107, The Prudential Insurance Company of America.

And the court coming on now to distribute the proceeds of said sale, amounting to the sum of Three Thousand (\$3000.00) Dollars, it is ordered that the said Sheriff pay out of the money in his hands:

1. To the Clerk of this court the costs of this case, \$51.95.
2. To the Treasurer of Franklin County, Ohio, for taxes and assessments against said real estate, the sum of \$64.70.
3. To The Prudential Insurance Company of America to apply on its judgment obtained on the note and mortgage set out in its petition, the sum of \$2883.35.

This cause coming on further to be heard upon the first and final account of the receiver heretofore appointed in this cause for the purpose of collecting the rents and managing the property constituting the subject matter of this action during the pendency hereof, the court does find that said account is a true and complete statement of the receipts and disbursements of said receiver in the discharge of his trust and does hereby confirm the same.

The court hereby allows the receiver the sum of \$11.45 for his compensation as such receiver. The court further finds that there remains in the hands of said receiver for distribution according to the order of this court the sum of \$174.77; it is accordingly ordered that the said sum of \$174.77 be paid to The Prudential Insurance Company of America to apply on the judgment heretofore rendered it herein.

[fol. 1277] It is further ordered that said receiver be

discharged and his bondsmen released from further liability upon the receiver's undertaking heretofore filed herein.

There remaining unpaid on the judgment of The Prudential Insurance Company of America, the sum \$2560.61, execution is awarded therefor against the defendants, David Friedberg and Frances F. Friedberg.

(S.) King, J.

✓ GOVERNMENT'S EXHIBIT 30

TREASURER'S DUPLICATE
OF

DELINQUENT PERSONAL PROPERTY

FRANKLIN COUNTY, OHIO

Heer Ptg. Co., Cols., O. CD 20320

DELINQUENT PERSONAL

Tax District

CITY OF COLUMBUS

Name

FRIEDBERG, DAVID

ADDRESS	Folio	Year	TAX	PENALTY	TOTAL	AMOUNT DUE	PAID	REMARKS	TAX NO.
180 S. 3 rd St. Colo 16.0	10-3-47 ARA	1942	3374	YV	3374				265
" " "	" " "	1943	5314	YV	5314				
" " "	" " "	1944	5608	YV	5608				
" " "	" " "	1945	6003	YV	6003				
" " "	" " "	1946	5158	YV	5158				
" " "	" " "	1947	5618	YV	5618	31075			
						8688		OCT 20 1947	
						22397			

TREASURER'S DUPLICATE
OF

DELINQUENT PERSONAL PROPERTY

FRANKLIN COUNTY, OHIO

Heer Ptg. Co., Cols., O. CD 27111

DELINQUENT PERSONAL

Tax District

CITY OF COLUMBUS

Name

FRIEDBERG, DAVID

ADDRESS	Folio	Year	TAX	PENALTY	TOTAL	AMOUNT DUE	PAID	REMARKS	TAX NO.
180 S. 3 rd St. Colo 16.0						22387			265A
						2608		NOV 12 1947	
						22779			
						6000		JAN 5 1948	
						10779			
						5158		JAN 16 1948	
						5621		FEB 13 1948	

Sheet #2

(760)
(1279)

41

22

Sept 27 30

FRANKLIN COUNTY, OHIO

Tax District		CITY OF COLUMBUS			Name		Frieburg David			
ADDRESS	Folio	Year	TAX	PENALTY	TOTAL	AMOUNT DUE	PAID	REMARKS	TAX NO	
131 No Nelson Rd	24-327	1935	168	17	185	185			605	
	24-314	1936	100	10	110	295			66	
	24-318	1937	105	11	116	411		off B & R	76	
						XX		C 8596		

761

FRED C. DUNN, County Auditor
FRANKLIN COUNTY

1946

1

Tax Form 910, Prescribed by
William S. Evatt, Tax Commissioner.

STATE OF OHIO

RETURN OF TAXABLE PROPERTY FOR 1946

IMPORTANT

LIST PROPERTY AND VALUES AS OF JANUARY 1, 1945 AND FILE RETURN WITH THE COUNTY AUDITOR BETWEEN FEBRUARY 15 AND MARCH 31.

RETURNS OF \$5000 INCOME YIELD OR \$5000 ASSESSABLE VALUE ARE TO BE FILED IN DUPLICATE.

ATTACH CHECK MADE PAYABLE TO THE COUNTY TREASURER FOR ONE HALF OF TAX. SECOND HALF OF TAX PAYABLE ON OR BEFORE SEPTEMBER 20th, 1945.

COUNTY OFFICIALS ARE NOT RESPONSIBLE FOR CURRENCY ENCLOSED IN MAIL.

BENEFICIARIES OF TRUSTS ARE REQUIRED TO LIST THE TAXABLE INCOME RECEIVED THROUGH A TRUSTEE IN SCHEDULE 6. SUCH LISTING MUST BE SUPPORTED BY FORM 915 AND MUST BE FILED IN DUPLICATE.

IF YOU HELD INVESTMENTS IN YOUR NAME AS NOMINEE, ATTACH SCHEDULE SHOWING ISSUER, NUMBER AND CLASS OF SHARES, NAME AND ADDRESS OF ACTUAL OWNER.

David Friedberg

Name of owner or estate

180 South 3rd St.

Mailing address, street, number or R. F. D.

Columbus, Ohio

City

Buckeye Tailors

Trade name

Tailoring to trade

Kind of Business or Profession

180 South 3rd St.

Business location, City, Street and Number.

Telephone No.

Denote capacity in which this return is made.

Owner ☒Administrator ☐Agent ☐Partner ☐Executor ☐Guardian ☐

Name of Fiduciary

Address of Fiduciary

Is this a joint return of husband and wife? Yes ☐ No ☐

If "Yes" state given name of husband or wife

File No.

FILED
FRED C. DUNN
County Auditor

Tax Commissioner's Stamp

TIME EXTENSION PERMIT

No. _____ was granted

to _____ 1945.

ADMINISTRATORS AND EXECUTORS

Give residence of deceased at time of death. Municipality _____ Township _____

Date of death _____

COMPUTATION OF TAX

TAXING DISTRICT	Grains Handled From Form 950B	Bushels	Rate of Tax	Amount of Tax	Amount of Advance Pmt.	Auditor's Column
	Wheat and Flax		.0005			
	All Other Grain		.00025			
		• • • • •	• • •			
TAX ON GRAIN HANDLED						

GENERAL TAX LIST

TAXING DISTRICT	Sched. 1	Sched. 2	Sched. 3	Sched. 4	Listed Value	Rate of Tax	Amount of Tax	Amount of Advance Pmt.
Columbus					2600	.0005	1.30	

GOVERNMENT'S EXHIBIT 30

C 2

SCHEDULE 1—DOMESTIC ANIMALS and farm products.

SCHEDULE 2—MACHINERY AND EQUIPMENT used in Manufacturing, Mining, Farming, Laundries, Dry Cleaning, Stone and Gravel Plants.

SCHEDULE 3—INVENTORIES—Manufacturing and Merchandising. Source of Monthly figures: Perpetual Stock ☐ Physical ☐ Gross Profits Method ☐
Check method of pricing: Cost ☐; Market ☐; Lower of Cost or Market ☐.

Months in Business Number.....	MANUFACTURING INVENTORY		MERCHANDISING INVENTORY			
	Taxing Dist.	Taxing Dist.	Taxing Dist.	Taxing Dist.	Taxing Dist.	Taxing Dist.
	Book Value	Book Value	Book Value	Book Value	Book Value	Book Value
January	\$	\$	\$	\$	\$	\$
February
March

CHANGES IN VALUATION OF REAL ESTATE OWNED OR OCCUPIED.

NEW BUILDINGS, STRUCTURES OR IMPROVEMENTS MADE OR
ERECTED OR MINERAL DEPOSITS DEVELOPED SINCE APRIL 9, 1944.

Kind of building structure improvement or mineral development

Increase in value \$

On what lot or lands situated

Taxing district

BUILDINGS, STRUCTURES OR IMPROVEMENTS DESTROYED, INJURED
OR REMOVED WHOLLY OR IN PART SINCE OCTOBER 1, 1944, AND NOT
RESTORED OR TO BE RESTORED PRIOR TO APRIL 8, 1945, OR THE
EXHAUSTION OR ABANDONMENT OF MINERAL DEPOSITS WITHIN
THE PAST YEAR.Kind of building, structure improvement or mineral depletion or abandon-
ment

Decrease in value \$

On what lot or lands situated

Taxing District.

TANGIBLE PROPERTY USED IN BUSINESS OR LIVESTOCK ON FARMS, HELD ON LEASE OR CONSIGNMENT.

Kind of property	County in which held	By whom owned (name and address)	Value
------------------	----------------------	----------------------------------	-------

IF IN BUSINESS IN MORE THAN ONE OHIO COUNTY GIVE NAMES OF COUNTIES.

STATE OF OHIO, FRANKLIN COUNTY, ss.

OATH

David Friedberg the above named taxpayer, being duly sworn, says that the statements contained
in the foregoing tax return are true, that the list contains a complete statement of all property required by law to be listed for taxation.

Sworn to and subscribed before me this 29 dayof Sept, 1945.Henry W. W. W.
Auditor—Deputy Auditor-Notary

(Sign here)

RATES OF TAXATION FRANKLIN COUNTY

TAXING DISTRICT	Tax Rate (Mills on Dollar)	TAXING DISTRICT	Tax Rate (Mills on Dollar)	TAXING DISTRICT	Tax Rate (Mills on Dollar)
1. Blenden Township	7.90	31. Jefferson Township	9.60	63. Pleasant Township	11.90
2. Mifflin Tp. Sch. District.....	12.40	32. Licking Co. Sch. District.....	9.35	64. Darby Tp. Sch. District.....	12.80
3. Plain Tp. Sch. District.....	13.70	33. Reynoldsburg Sch. District --	13.90	65. Georgesville Sch. District	9.30
4. Sharon Tp. Sch. District.....	10.80	34. Madison Township	6.30		

STATE OF OHIO

FRED C. DUNN, County Auditor

RETURN OF TAXABLE PROPERTY FOR 1947

Tax Form 910. Prescribed by
C. Emory Glander, Tax Commissioner

Page 1

FRANKLIN COUNTY

IF YOU HELD NO TANGIBLE PROPERTY REQUIRED TO BE LISTED, YOU MAY DECLARE "NONE" IN GENERAL TAX LIST BELOW AND FILL IN PAGES 1 AND 2 ONLY.

If this Return is for husband and wife, show first name of each. For an ESTATE, show decedent's name and that of the EXECUTOR, ADMINISTRATOR or TRUSTEE (See NOTE to left relative to Returns of TRUSTEES). For a MINOR or WARD, show name and that of Parent or Guardian. An AGENT should show TAXPAYERS name and the Agents name. If IN BUSINESS, show TRADE NAME and NAME of owner or owners.

TAXPAYERS ENGAGED IN BUSINESS MUST FILE A BALANCE SHEET WITH THIS RETURN.

FILE THIS RETURN WITH YOUR COUNTY AUDITOR BETWEEN FEBRUARY 15, AND MARCH 31, AND IN DUPLICATE IF IT CONTAINS \$500.00 INCOME YIELD, \$5000.00 TOTAL ASSESSABLE VALUE OR ANY INCOME FROM A TRUST OR A LIFE ESTATE. IF MAILED TO COUNTY AUDITOR, ATTACH CHECK, DRAFT OR MONEY ORDER PAYABLE TO COUNTY TREASURER, FOR AT LEAST HALF OF THE TAX. CURRENCY MAILED IS AT YOUR OWN RISK.

NOTE

A TRUSTEE IS NOT A TAXPAYER TO THE EXTENT OF INVESTMENTS, PRODUCTIVE AND UNPRODUCTIVE, AND OTHER TAXABLE INTANGIBLE PROPERTY YIELDING INCOME WHEN SUCH ARE HELD FOR THE BENEFIT OF BENEFICIARIES. See Section 5370, G. C. THE TAXABLE INCOME OF A TRUST OR A LIFE ESTATE, SET OUT IN FORM 915, MUST BE LISTED IN SCHEDULE 6 OF THIS RETURN BY THE OHIO RESIDENT BENEFICIARY.

David Friedberg

Name—Estate, etc.

180 South 3rd St.

Mailing Address—Street number—Box or R.F.D. number

Columbus, Ohio

City and Zone number, if any.

Buckeye Tailors(Tailoring to trade)

Kind of business or profession

180 South 3rd St.

Business location—City, Street and Number

Telephone number

DID YOU HOLD INVESTMENTS AS NOMINEE ON JANUARY 1, 1947?

Yes ☐ No ☐ If YES, see instructions on Page 2 of this form. **IMPORTANT**

DENOTE CAPACITY IN WHICH THIS RETURN IS FILED

Owner ☒ Executor ☐ Parent ☐ Agent ☐
Partnership ☐ Administrator ☐ Guardian ☐ Trustee ☐ See note on left.

File No. 20050

COUNTY AUDITOR'S
RECEIVED STAMP

FRED C. DUNN

TAX COMMISSIONER'S
RECEIVED STAMP

FOR EXECUTORS AND ADMINISTRATORS Show Probate Court Case Number.....

Date of decedent's death..... Domicile at date of death. Municipality..... Township.....

Does the will of decedent provide for the setting up of a trust or life estate? Yes ☐ No ☐ If yes, were investments transferred to a trustee during 1946? Yes ☐ No ☐ If yes, the transferred investments should be listed in this return. If transferred following 1946 the listing must be made in the next regular return. See Section 5368-1, G. C. and instructions on page 2 of this form.

Were you in business in more than one Ohio county at January 1, 1947 or at your fiscal year end, if on that basis? Yes ☐ No ☐

If yes, state the name of the counties.....

HAVE YOU IMPROVED OR ERECTED BUILDINGS OR STRUCTURES OR DEVELOPED MINERAL DEPOSITS ON YOUR REAL ESTATE SINCE APRIL 7, 1946? Yes ☐ No ☐

STATE

Kind Value Increase Identify lots, land and taxing district.
Was any of your real property partly or wholly destroyed after April 7, 1946 and before October 1, 1946? Yes ☐ No ☐
Have your mineral deposits been partly or wholly exhausted since April 7, 1946? Yes ☐ No ☐

STATE

Kind Value Decrease Identify lots, land and taxing district.

Did you as lessee or consignee hold any tangible property used in business or any live stock on a farm at January 1, 1947, or at your fiscal year end, if on that basis? Yes ☐ No ☐

STATE

Kind of property County where held Name and address of owner Value

COMPUTATION OF TAX

TAXING DISTRICT

GENERAL TAX LIST

Wheat and flax From form 930 B

Amount of tax

All other grain From form 930 B

Amount of tax

CARDED

NO CHECK SEP 30 1947

GOVERNMENT'S EXHIBIT 30

SCHEDULES 6 & 7.

INVESTMENTS to be listed in Schedules 6 or 7 as **PRODUCTIVE OR UNPRODUCTIVE** ARE: all shares of stock and interest bearing obligations owned by you on January 1, 1947, or those transferred to a trustee by you as an individual or as an executor of an estate; **EXCEPT**, obligations of the United States, its territories, districts, dependencies or instrumentalities, stock of Ohio Financial Institutions, Dealers in intangibles doing business in Ohio, and Insurance Companies organized under the laws of Ohio; non-withdrawable shares of stock of Financial Institutions located outside of Ohio, and deposits in such institutions yielding four per cent or less; obligations issued prior to 1913 by the State of Ohio or any of its political or other subdivisions or school districts. See below for those investments to be listed **ONLY** if productive.

Each Ohio taxpayer, as owner or executor, who transferred taxable investments to a trustee within 1946 must list these, in this return, by items as to ownership and taxing district as of the date of transfer and as to income yield or true value as of January 1, 1947; he may deduct from income yield the GROSS INCOME received by the trustee from ONLY THOSE INVESTMENTS SO TRANSFERRED. See Section 5368-1, G. C.

➡ If you held investments at January 1, 1947, as NOMINEE, an itemized list of these should be written in or attached to this return, with name of issuer or debtor, number of shares, amount, dividend or interest rate, and the name and address of the true owner.

INCOME YIELD means the TOTAL dividend or interest payments throughout 1946 whether to you or another.

UNPRODUCTIVE INVESTMENTS are stocks and interest bearing obligations that paid no dividends or interest to any one within 1946.

PRODUCTIVE INVESTMENTS
Those yielding income to you or another in 1946
SCHEDULE 6

UNPRODUCTIVE INVESTMENTS
Those yielding no income to anyone in 1946
SCHEDULE 7

[illegible]

IMPORTANT ↓

IF THE INCOME YIELD OF SCHEDULE C DIFFERS FROM THE INCOME FROM INVESTMENTS AND OTHER INTANGIBLE PROPERTY SHOWN ON YOUR 1946 FEDERAL INCOME TAX RETURN, ATTACH A STATEMENT OF EXPLANATION AND RECONCILIATION. THIS INFORMATION WILL ELIMINATE CORRESPONDENCE.

THE FOLLOWING INVESTMENTS ARE TAXABLE ONLY IF PRODUCTIVE.

Royalties from Patents. Show the GROSS income \$.....and enter 20.4584% of it here.

Royalties from Copyrights. Show the GROSS income \$.....and enter 24.9967% of it here.

TRUSTS and LIFE ESTATES. Prepare and file form 913 for each; enter here each legal name and taxable income whether Federal Election Form 912 is used or not.

READ INSTRUCTIONS CAREFULLY. SEE ADDITIONAL INSTRUCTIONS ON PAGE 4.

SCHEDULE 1—Enter here the True Value of Domestic Animals USED IN AGRICULTURE and list for taxation at 50%; Domestic Animals USED IN BUSINESS, or in any manner OTHER than in Agriculture, at 70%. The \$100.00 deduction from the listed value of Domestic Animals may be taken ONLY by INDIVIDUALS who are Residents of Ohio, and not by Corporations or others.

Enter here the True Value of Agricultural Products located ON FARMS and list for taxation at 50%. Agricultural Products NOT located on Farms at 70%.

SCHEDULE 1—Domestic Animals, Agricultural Products, on Farms, in Business, or Otherwise.

DOMESTIC ANIMALS	No.	Taxing District	No.	Taxing District	AGRICULTURAL PRODUCTS	Quantity	Taxing District	Quantity	Taxing District
		True Value		True Value			True Value		True Value
Horses and Mules.....		\$		\$	Hay		\$		\$
Cows and Bulls.....					Straw				
Other Cattle					Corn and Ensilage				
Ewes and Rams					Wheat				
Lambs and Feeders.....					Oats, etc.				
Sows and Boars					Soy Beans				
Pigs and Feeders					Tobacco				
Chickens, Turkeys, etc.....					Potatoes, Apples.....				
Others					Wool, others.....				
TOTAL DOMESTIC ANIMALS		\$		\$	TOTAL AGRICULTURAL PRODUCTS		\$		\$
SEE ABOVE INSTRUCTIONS Enter 50 or 70%			Total \$		See Above Instructions Enter 50 or 70%			Total \$	
Deduct \$100.....					Add Domestic Animals same Tax District from Column 1 or 2.....				
TOTAL		\$			TOTAL Agri. Prod. & Dom. Animals		\$		\$
If Agricultural Products are also listed in these same Taxing Districts, carry above totals to proper Taxing District, Column 3 or 4, otherwise to Schedule 1, Page 1.					CARRY ABOVE TOTALS TO SCHEDULE 1, Page 1.				

SCHEDULE 2—Enter here ONLY Machinery and Equipment used in the particular processes of the businesses as stated. Machinery and Equipment NOT used in such processes or used in other forms of business is to be listed in Schedule 4 below. Do not include fixtures classed as real estate.

SCHEDULE 2—Machinery and Equipment used in Manufacturing, Mining, Farming, Laundries, Dry Cleaning, Stone and Gravel Plants.

TAXING DISTRICT	DESCRIPTION	BOOK VALUE	List at 50% of Book Value
		\$	\$
		\$	\$
		\$	\$
Enter Net Total in Schedule 2, Page 1.....		Net Total.....	\$

SCHEDULE 3—Enter here the book value of Inventory of Merchants and Manufacturers at the end of each month as noted below. If books do NOT disclose direct monthly book inventories, the use of the Purchases and Sales columns is required. Enter Purchases at COST and in the month in which RECEIVED. Enter SALES at RETAIL in the month in which SOLD. Inventories of Others, such as hotels, laundries, contractors, repair shops, etc. are to be listed in Schedule 4 below.

SCHEDULE 3—INVENTORIES. Manufacturing and Merchandising. Source of Monthly figures Perpetual ☐ Physical ☐ Gross Profits Method ☐ Check method of pricing: Cost ☐; Market ☐; Lower of Cost or Market ☐

Months in Business Number	MANUFACTURING INVENTORY		MERCHANDISING INVENTORY		Monthly Cost of Purchases —as Received	Monthly Sales at Retail —as Sold
	Taxing Dist. Book Value	Taxing Dist. Book Value	Taxing Dist. Book Value	Taxing Dist. Book Value		
January	\$	\$	\$	\$	\$	\$
February						
March						
April						
May						
June						
July						
August						

SCHEDULE 6. SUCH LISTING MUST BE SUPPORTED BY FORM 915 AND MUST BE FILED IN DUPLICATE.

IF YOU HELD INVESTMENTS IN YOUR NAME AS NOMINEE, ATTACH SCHEDULE SHOWING ISSUER, NUMBER AND CLASS OF SHARES, NAME AND ADDRESS OF ACTUAL OWNER.

Partner ☐ Executor ☐ Guardian ☐

Name of Fiduciary

Address of Fiduciary

Is this a joint return of husband and wife? Yes ☐ No ☐

If "Yes" state given name of husband or wife

TIME EXTENSION PERMIT

No. was granted

to 1945.

ADMINISTRATORS AND EXECUTORS

Give residence of deceased at time of death. Municipality Township

Date of death

COMPUTATION OF TAX

TAXING DISTRICT	Grains Handled From Form 910B	Bushels	Rate of Tax	Amount of Tax	Amount of Advance Pmt.	Auditor's Column
	Wheat and Flax		.0005	\$	\$	\$
	All Other Grain		.00025	\$	\$	\$
		\$	\$	\$
TAX ON GRAIN HANDLED				\$	\$	\$

GENERAL TAX LIST

TAXING DISTRICT	Sched. 1	Sched. 2	Sched. 3	Sched. 4	Listed Value	Rate of Tax	Amount of Tax	Amount of Advance Pmt.
1 - Columbus				2670	2670	1.80	48.06	
	1500			700				
				3070	3070	1.68	51.58	

CLASSIFIED TAX LIST

TAXING DISTRICT (City or incorporated village of residence)	LISTED VALUE OR AMOUNT			
Investments Yielding Income. Sched. 6.....		5%	\$	\$
Investments Not Yielding Income. Sched. 7.....		2 mills		
Deposits—From Schedule 8.....		2 mills		
Credits—From Schedule 9.....		3 mills		
Money and Other Taxable Intangibles—From Schedule 10.....		3 mills		
Total Classified Tax.....		xxx	\$	\$
TOTAL VALUE AND TAX.....	\$	1.00	\$	48.06

DEPARTMENT OF TAXATION

COUNTY AUDITOR

Acceptable as is.....
 Inquiries pending.....
 To be Investigated.....
 Investigation Completed.....
 Acceptable as per Correction Sheet.....

Included with Return:

- ☐ Balance Sheet
☐ Summary Federal Tax Return
☐ 902 Claim
☐

Advance Payment

General Tax.....
 Classified Tax.....
 Penalty late filing ☐
 Penalty non-payment ☐

MAKE RETURNS TO COUNTY AUDITOR—MAKE PAYMENTS TO COUNTY TREASURER
 THIS RETURN MUST BE FILED BY MARCH 31, 1945, TO AVOID PENALTY

INMENT'S EXHIBIT 30

FILED OCT 3 1947 C

1280

TOBACCO									
POTATOES, APPLES									
WOOL, Others			List at 50% of Value			List at 50% of Value		List at 70% of Value	
TOTAL FARM PRODUCTS	\$		\$		\$		\$		\$
TOTAL SCHEDULE 1		X X X X	\$		X X X X	\$		X X X X X	\$

SCHEDULE 2—MACHINERY AND EQUIPMENT used in Manufacturing, Mining, Farming, Laundries, Dry Cleaning, Stone and Gravel Plants.

Taxing District	DESCRIPTION	Book Value	List at 50% of Book Value
		\$	\$
		\$	\$

TOTAL VALUES

SCHEDULE 3—INVENTORIES—Manufacturing and Merchandising. Source of Monthly figures: Perpetual Stock ☐ Physical ☐ Gross Profits Method ☐.
Check method of pricing: Cost ☐; Market ☐; Lower of Cost or Market ☐.

Months in Business Number.....	MANUFACTURING INVENTORY		MERCHANDISING INVENTORY			
	Taxing Dist.	Taxing Dist.	Taxing Dist.	Taxing Dist.	Taxing Dist.	Taxing Dist.
	Book Value	Book Value	Book Value	Book Value	Book Value	Book Value
January	\$	\$	\$	\$	\$	\$
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
TOTAL VALUES	\$	\$	\$	\$	\$	\$
AVERAGE VALUES Divide by No. Months						
List at 50% of Average Value	\$	\$	• • • • •	• • • • •	• • • • •	• • • • •
List at 70% of Average Value	• • • • •	• • • • •	\$	\$	\$	\$

SCHEDULE 3A—ACCOUNTS REPORTED ON FEDERAL INCOME TAX RETURN

TOTAL RECEIPTS FROM BUSINESS OR PROFESSION FOR TAXABLE YEAR	\$
INVENTORY AT BEGINNING OF YEAR	\$
MERCHANDISE BOUGHT FOR SALE	\$
INVENTORY AT END OF YEAR	\$
DEPRECIATION	\$

SCHEDULE 4—FURNITURE, FIXTURES, EQUIPMENT, MACHINERY, SUPPLIES, ETC., Used in Business. Except as listable in Schedule 2.
WATERCRAFT & AIRCRAFT (List in taxing dist of owner's residence at 70%)
EQUIPMENT FOR GENERATION OR DISTRIBUTION OF ELECTRICITY TO OTHERS (At 100%)

Taxing District	DESCRIPTION	Book Value	List at 70% of Book Value
Columbus	Tailoring Supplies	\$ 3510	\$
Columbus	Furniture & Fixtures	300	
TOTAL VALUES		\$ 3810	\$ 2670

PATENT AND COPYRIGHT ROYALTIES (Hoskold Formula)
INCOME FROM TRUST FUNDS (From form 915)

ANNUITIES — Issuing Company

Purchase price
(if any)

Date First
Pay't Rec'd

Total From Investments Yielding Income From Form 912

TOTAL INCOME YIELD—Schedule 6

TOTAL TRUE VALUE—Schedule 7

The taxpayer may elect to file with this return, or mail to the Tax Commissioner at Columbus, Ohio, a verified summary of his Federal Income Tax Return (Form 912) for the last preceding taxable year, together with a statement of the aggregate amount of income derived from investments taxable under Ohio laws, the income from which he is not required to report for federal income tax purposes.

The reporting of income by the above method does not relieve the taxpayer from listing investments not yielding income in Schedule 7 above.

IF THE AMOUNT FROM INVESTMENTS YIELDING INCOME AS SHOWN ON THIS RETURN DIFFERS FROM THE AMOUNT FROM LIKE SOURCES AS SHOWN ON YOUR FEDERAL INCOME TAX RETURN, A STATEMENT MUST BE ATTACHED EXPLAINING THIS DIFFERENCE.

SCHEDULE 8—DEPOSITS.

CHECKING ACCOUNTS, SAVINGS ACCOUNTS, CERTIFICATES OF DEPOSIT OR WITHDRAWABLE STOCK OUTSIDE

OHIO held on November 8, 1944 and yielding 4% or less

POSTAL SAVINGS held on January 1, 1945

TOTAL DEPOSITS

SCHEDULE 9—CREDITS—Applicable to taxpayers engaged in business on their own behalf or professional pursuit.

NOTES AND ACCOUNTS RECEIVABLE, due on demand or within one year from date of inception, ALSO PREPAID INTANGIBLE ITEMS

NOTES AND ACCOUNTS PAYABLE, due on demand or within one year from date of inception (except taxes and assessments)

NET TAXABLE CREDITS

CREDITS TAXABLE IN OHIO IN CASE BUSINESS LOCALIZATION IS OUTSIDE OHIO (From balance sheet page 1, Exhibit A)

SCHEDULE 10—MONEYS AND OTHER TAXABLE INTANGIBLES.

CASH ON HAND OR IN SAFE DEPOSIT BOX (Not on Deposit)

UNCOLLECTED CHECKS, JUDGMENTS, NON INTEREST ACCOUNTS Due after one year from date
of inception

ALL OTHER TAXABLE INTANGIBLES

NON TAXABLE BONDS AND SECURITIES REPRESENTING PROCEEDS OF TAXABLE PROPERTY
CONVERTED AFTER OCTOBER 31, 1944

DEPOSITS REPRESENTING PROCEEDS OF TAXABLE PROPERTY CONVERTED AFTER
NOVEMBER 8, 1944, TO THE EXTENT HELD ON LISTING DAY

TOTAL AMOUNT OF MONEYS and OTHER TAXABLE INTANGIBLES

IF IN BUSINESS IN MORE THAN ONE OHIO COUNTY GIVE NAMES OF COUNTIES.

STATE OF OHIO, FRANKLIN COUNTY, ss.

OATH

David Friedberg the above named taxpayer, being duly sworn, says that the statements contained in the foregoing tax return are true, that the list contains a complete statement of all property required by law to be listed for taxation.

Sworn to and subscribed before me this 29 day

of Sept, 1948.

Henry W. W. W.
Auditor—Deputy Auditor-Notary

(Sign here)

RATES OF TAXATION FRANKLIN COUNTY

TAXING DISTRICT	Tax Rate (Mills on Dollar)	TAXING DISTRICT	Tax Rate (Mills on Dollar)	TAXING DISTRICT	Tax Rate (Mills on Dollar)
1. Blendon Township	7.90	31. Jefferson Township	9.60	63. Pleasant Township	11.90
2. Mifflin Tp. Sch. District.....	12.40	32. Licking Co. Sch. District.....	9.35	64. Darby Tp. Sch. District.....	12.80
3. Plain Tp. Sch. District.....	13.70	33. Reynoldsburg Sch. District ..	13.90	65. Georgesville Sch. District	9.30
4. Sharon Tp. Sch. District.....	10.80	34. Madison Township	9.30	66. Jackson Tp. Sch. District.....	9.60
5. Westerville Sch. District	11.80	35. Marion Tp. Sch. District	11.00	67. Madison Co. Sch. District ...	8.60
6. Minerva Park Corp.	14.00	36. Pickaway Co. Sch. District..	8.70	68. Prairie Tp. Sch. District.....	7.90
7. Westerville Corp.	17.90	37. Violet Tp. Sch. District	13.00	69. Scioto Tp. Sch. District.....	10.90
8. Brown Township	12.70	38. Winchester S. D.....	13.80	70. Harrisburg Corp.	12.90
9. Norwich Tp. Sch. District....	12.40	39. Groveport Corp.	12.70	71. Prairie Township	8.50
10. Clinton Township	12.22	40. Winchester Corp.	16.60	72. Brown Tp. Sch. District	13.30
11. Mifflin Tp. Sch. District	13.50	41. Marion Township	12.30	73. Norwich Tp. Sch. District....	13.00
12. Perry Tp. Sch. Dist.	12.30	42. Madison Tp. Sch. District	10.60	74. New Rome Corp.	8.50
13. Sharon Tp. Sch. Dist.	11.90	43. Bexley Corp.	12.20	75. Sharon Township	11.10
14. Franklin Township	8.70	44. Hanford Corp.	14.40	76. Delaware Co. Sch. District...	10.47
15. Col. Ind. Sch. District.....	10.92	45. Mifflin Township	13.00	77. Perry Tp. Sch. District.....	11.50
16. Grandview Hts. Sch. District.	14.90	46. Jefferson Tp. Sch. District...	9.20	78. Westerville Sch. District	12.10
17. Jackson Tp. Sch. District....	8.80	47. Sharon Tp. Sch. District	11.40	79. Worthington Sch. District....	12.00
18. Norwich Tp. Sch. District....	11.60	48. Truro Tp. Sch. District	11.80	80. Riverlea Corp.	15.60
19. Prairie Tp. Sch. District.....	7.10	49. Gahanna Corp.	12.70	81. Worthington Corp.	16.20
20. Grandview Hts. Corp.	17.40	50. Norwich Township	12.60	82. Truro Township	11.10
21. Marble Cliff Corp.	15.90	51. Special Sch. Dist. No. 1.....	14.90	83. Madison Tp. Sch. District....	8.90
22. Valleyview Corp.	11.20	52. Hilliard Corp.	17.40	84. Reynoldsburg Sch. District...	12.80
23. Hamilton Township	11.00	53. Perry Township	11.60	85. Violet Tp. Sch. District	12.60
24. Madison Tp. Sch. District....	9.10	54. Grandview Hts. Sch. District.	15.50	86. Reynoldsburg Corp.	15.80
25. Marion Tp. Sch. District....	10.80	55. Sharon Tp. Sch. District	11.20	87. Washington Township	12.30
26. Lockbourne Corp.	13.00	56. Washington Tp. Sch. Dist....	12.40	88. Norwich Tp. Sch. District....	12.10
27. Obetz Corp.	12.60	57. Worthington Sch. District ...	12.10	89. Plain City Sch. District	13.00
28. Jackson Township	9.70	58. Upper Arlington Corp.	14.20	90. Dublin Corp.	13.80
29. Urbancrest Sch. District	10.80	59. Plain Township	14.80	91. Columbus Corp.	18.00
30. Grove City Corp.	12.30	60. Blendon Tp. Sch. District....	9.00		
		61. Westerville Sch. District	12.90		
		62. New Albany Corp.	15.30		

must be made in the next regular return. See Section 5368-1, G. C. and instructions on page 2 of this form.

Were you in business in more than one Ohio county at January 1, 1947 or at your fiscal year end, if on that basis? Yes ☐ No ☐

If yes, state the name of the counties.....

HAVE YOU IMPROVED OR ERECTED BUILDINGS OR STRUCTURES OR DEVELOPED MINERAL DEPOSITS ON YOUR REAL ESTATE SINCE APRIL 7, 1946? Yes ☐ No ☐

STATE _____ Kind _____ Value Increase _____ Identify lots, land and taxing district.

Was any of your real property partly or wholly destroyed after April 7, 1946 and before October 1, 1946? Yes ☐ No ☐
Have your mineral deposits been partly or wholly exhausted since April 7, 1946? Yes ☐ No ☐

STATE _____ Kind _____ Value Decrease _____ Identify lots, land and taxing district.

Did you as lessee or consignee hold any tangible property used in business or any live stock on a farm at January 1, 1947, or at your fiscal year end, if on that basis? Yes ☐ No ☐

STATE _____ Kind of property _____ County where held _____ Name and address of owner _____ Value _____

COMPUTATION OF TAX

TAXING DISTRICT	GENERAL TAX LIST							
	Wheat and flax From form 930 B				Amount of tax			
	All other grain From form 930 B				Amount of tax			
	Sched. 1	Sched. 2	Sched. 3	Sched. 4	Listed Value	Rate of Tax	Amount of Tax	Amount of Advance Pmt.
Columbus				3040	3040	16.80	51.07	
				3344.	3344.	1.68	56.18	

CLASSIFIED TAX LIST

If you live in an incorporated village or city, show its name. Otherwise check here () County	VALUE OR AMOUNT From Page 2	Multiply by		
Enter Investments Yielding Income From Schedule 6.....		5%	\$	\$
Enter Investments Not Yielding Income From Schedule 7.....		.002		
Enter Deposits From Schedule 8.....		.002		
Enter Credits From Schedule 9.....		.003		
Enter Money and Other Taxable Intangibles From Schedule 10.....		.003		
Total Classified Tax.....		XXX	\$	\$
TOTAL VALUE AND TAX.....		XXX	\$	51.07

STATE OF OHIO, FRANKLIN COUNTY, ss.

I/we Spaul Friedberg being duly sworn, says that the statements and listings in this tax return are to the best of my/our knowledge and belief, true and complete.
Sworn to and subscribed before me this 24 day of Sept 1947.

Signature Harry W. Wiers
County Auditor, Deputy, Notary, Agent Department of Taxation

OATH

FOR USE OF THE COUNTY AUDITOR

Acceptable as is.....
For investigation.....
Inquiries pending.....
Investigation completed.....
Acceptable per correction sheet.....

TIME EXTENSION PERMIT

Included with this return.

PENALTY, Failure to make first half payment ☐

No. was granted 902 Claim ☐ Form 911 ☐ Form

to 1947 912 ☐ Other ☐ PENALTY, late filing ☐

MAIL RETURNS TO COUNTY AUDITOR WITH CHECK MADE PAYABLE TO COUNTY TREASURER
THIS RETURN MUST BE FILED BY MARCH 31, 1947, TO AVOID PENALTY

IMPORTANT ↓

IF THE INCOME YIELD OF SCHEDULE 6 DIFFERS FROM THE INCOME FROM INVESTMENTS AND OTHER INTANGIBLE PROPERTY SHOWN ON YOUR 1946 FEDERAL INCOME TAX RETURN, ATTACH A STATEMENT OF EXPLANATION AND RECONCILIATION. THIS INFORMATION WILL ELIMINATE CORRESPONDENCE.

THE FOLLOWING INVESTMENTS ARE TAXABLE ONLY IF PRODUCTIVE.

Royalties from Patents. Show the GROSS income \$_____ and enter 20.4584% of it here.

Royalties from Copyrights. Show the GROSS income \$_____ and enter 24.9967% of it here.

TRUSTS and LIFE ESTATES. Prepare and file form 915 for each; enter here each legal name and taxable income whether Federal Election Form 912 is used or not.

ANNUITIES—Enter INCOME YIELD as 2% of cost (if any) if first payment received after 1932; otherwise 2% of its worth computed on the date first returnable for Ohio taxation.

Enter name of issuer below and INCOME YIELD in third column	Purch. Price or worth	Date First Pay't Rec'd

FEDERAL ELECTION—Form 912. If his Federal Income Tax Return covers 12 months, a taxpayer may, instead of listing the income yield of each productive investment, elect to file this statement of his total income taxable to Ohio, per instructions on the Form. Unproductive investments are still to be listed. If this Form is used, enter total income from PRODUCTIVE investments here.

ENTER TOTAL INCOME YIELD OF SCHEDULE 6 AND TOTAL VALUE OF SCHEDULE 7.

SCHEDULE 8—DEPOSITS. CHECKING, SAVINGS ACCOUNTS, CERTIFICATES OF DEPOSIT OR WITHDRAWABLE STOCK OF FINANCIAL INSTITUTIONS LOCATED OUTSIDE OHIO held on November 7, 1946 yielding 4% or less and POSTAL SAVINGS held on Jan. 1, 1947

SCHEDULE 9—CREDITS. ENTER ONLY TOTALS DUE TO OR FROM YOUR BUSINESS ON DEMAND OR WITHIN ONE YEAR OF THEIR BEGINNING.

Notes and accounts receivable and prepaid intangible accounts at their book value	\$_____	
Notes and accounts payable EXCEPT taxes and assessments. Enter excess of receivables over payables in last column.	\$_____	\$_____

SCHEDULE 10—MONEYS AND OTHER TAXABLE INTANGIBLES. Undeposited cash on hand, in safe deposit box or elsewhere. Uncollected checks, judgments and non-interest bearing obligations including those used in business and not due within one year from their beginning. Include value of refund portion of annuities. ENTER HERE. NON-TAXABLE SECURITIES NOT TAXED AT THE SOURCE. Enter here taxable securities changed into non-taxable securities between October 31, 1946, and January 1, 1947, to the extent they were held on January 1, 1947.

DEPOSITS NOT TAXED AT THE SOURCE. Enter here, DEPOSITS held at Jan. 1, 1947 that resulted from conversion of TAXABLE PROPERTY, otherwise than in the regular course of YOUR BUSINESS, between Nov. 7, 1946 and Jan. 1, 1947.

The Dept. of Taxation, your County Auditor or the company from which your annuity was bought will compute its worth if first payment was received before 1933 or there was no purchase price.

A person who receives payments from a refund portion of an annuity should return the fair value of the balance due at each January 1, in schedule 10. See your County Auditor relative to the fair value.

TAXING DISTRICT	DESCRIPTION	BOOK VALUE	List at 50% of Book Value
		\$	\$
		\$	\$
		\$	\$
Enter Net Total in Schedule 2, Page 1.....		Net Total.....	\$

SCHEDULE 3— Enter here the book value of Inventory of Merchants and Manufacturers at the end of each month as noted below. If books do NOT disclose direct monthly book inventories, the use of the Purchases and Sales columns is required. Enter Purchases at COST and in the month in which RECEIVED. Enter SALES at RETAIL in the month in which SOLD. Inventories of Others, such as hotels, laundries, contractors, repair shops, etc. are to be listed in Schedule 4 below.

SCHEDULE 3—INVENTORIES. Manufacturing and Merchandising. Source of Monthly figures Perpetual ☐ Physical ☐ Gross Profits Method ☐ Check method of pricing: Cost ☐; Market ☐; Lower of Cost or Market ☐.

Months in Business Number	MANUFACTURING INVENTORY		MERCHANDISING INVENTORY		Monthly Cost of Purchases —as Received	Monthly Sales at Retail —as Sold
	Taxing Dist. Book Value	Taxing Dist. Book Value	Taxing Dist. Book Value	Taxing Dist. Book Value		
January	\$	\$	\$	\$		
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
TOTAL VALUES	\$	\$	\$	\$		
AVERAGE VALUES						
Divide by No. of Months.....	\$	\$	\$	\$		
List at 50%						
Enter in Schedule 5, Page 1.....	\$	\$	\$	\$		
List at 70%						
Enter in Schedule 3, Page 1.....						

SCHEDULE 3A— All taxpayers engaged in a business or profession are required to enter the information indicated in this Schedule.

SCHEDULE 3A— Accounts Reported on Federal Income Tax Return

Total receipts from business or profession for taxable year.....	\$
Inventory at beginning of year. (If other than INVENTORY listable in Schedule 3 above is included herein, attach full explanation).....	\$
Merchandise bought for sale.....	\$
Inventory at end of year. (If other than INVENTORY listable in Schedule 3 above is included herein, attach full explanation).....	\$
Depreciation	\$

SCHEDULE 4— Enter here at the year end book value and list for taxation at 70% all Machinery and Equipment used in all businesses OTHER than Manufacturing, Mining, Agriculture, Laundries, Dry Cleaning and in Stone and Gravel Plants; Furniture and personal fixtures of ALL Businesses; All supplies not used in Manufacturing or not held for sale by Merchants; and All Watercraft and Aircraft. Equipment for the Generation or Distribution of Electricity to others is to be entered in this Schedule for taxation at 100% of book value.

SCHEDULE 4— Furniture, Fixtures, Equipment, Machinery, Supplies, etc., Used in Business. Except as listable in Schedule 2.
Watercraft and Aircraft (List in taxing district of owner's residence at 70%)
Equipment for Generation or Distribution of Electricity to others (At 100%)

TAXING DISTRICT	DESCRIPTION	BOOK VALUE	List at 70% of Book Value
Columbus	Tailoring Supplies	4065	
"	Furniture & Fixtures	280	
Enter Total in Schedule 4, Page 1.....		TOTAL	
		4340	3040

GENERAL. INDIVIDUAL RETURN FORM 910 should be used by the following taxpayers:

Individuals, husbands and wives living together and filing joint returns, partnerships and unincorporated associations, and fiduciaries for such who have not filed 1947 tax returns.

Fiduciaries include executors, administrators, guardians, parents or others having lawful charge of personal or intangible property for individuals; receivers and assignees for the benefit of creditors; trustees in bankruptcy; agents, factors, lessees and bailees for non-residents, and other lawful fiduciaries.

INFORMATION REQUESTED, SO FAR AS APPLICABLE TO THE TAXPAYER, should be denoted or furnished in full.

For **SCHEDULES OF INSUFFICIENT SPACE**, attach firmly a slip or sheet in full like detail.

ACCOMPANYING AND ALTERNATING FORMS. Balance Sheet, Form 911, must be submitted by all individuals, partnerships and unincorporated associations engaged in business. Federal Election Form 912 may be used, under conditions therein stated, in place of itemized listing of productive investments in Schedule 6.

These two may be transmitted in special **CONFIDENTIAL** envelopes to the Tax Commissioner at Columbus. So may Form 915, Interest in a Trust or Life Estate, by the beneficiary taxpayer. In the absence of these, returns needing their support are not completely filed.

Return of Grain Handled, Form 930B, must be submitted with the return by all persons engaged in the business of handling grain.

Claim for Deduction From Depreciated Book Value, Form 902, must be executed in duplicate and filed with the return to assure consideration of the taxpayer's claim that his book value exceeds true value for any tangible property or accounts receivable. These must be listed in the return, however, at book value.

LISTING DAY. January 1, 1947, is tax listing day by law, with certain exceptions:

Deposits in Financial Institutions outside of Ohio, for Schedule 8 though not for Schedule 10, are to be listed as of November 7, 1946.

A taxpayer who has been in business for twelve months and whose Federal income tax return is on a special fiscal year basis, must list his taxable property (other than deposits as above) and furnish a balance sheet as of the end of such fiscal year and list the income yield of his investments as paid within that year—unless the Tax Commissioner has authorized or required a different date or period.

For investments transferred to a trustee, see Section 5368-1, G. C., and instructions on page 2 of this return.

Users of Federal Election Form 912 have a 1946 Federal income basis for productive investments in lieu of an income yield basis.

PLACE IN WHICH LISTED. Tangible Personal Property is generally to be listed in the taxing district where physically

located. Domestic animals used in business are to be listed in the taxing district where used; otherwise, where kept. Watercraft and Aircraft and shares therein are to be listed in the taxing district where the owner resides.

Intangible Property is to be listed in the incorporated city or village where the owner resides, or, if he resides outside of such, in the county of his residence.

Intangible Property of an interstate business acquires a business situs in accordance with the provisions of Sections 5328-1 and 5328-2, G. C., which see.

A Fiduciary Listing Intangible Property of the estate of a deceased Ohio resident should list such property in the taxing district in which the deceased resided at the time of death; an Ohio resident fiduciary listing property of a ward, minor, insane person, or beneficiary of a trust, residing in Ohio, is to list such property in the taxing district where the fiduciary resides, but if the fiduciary be a non-resident, then in the taxing district in which the ward, minor, insane person, or beneficiary resides. Proper taxing district identification in this return is important.

TANGIBLE PROPERTY. Book Value of tangible property used in business is to be listed if records are kept, and True Value of domestic animals used in agriculture and agricultural products on farms.

SCHEDULE 2. Omit patterns, jigs, dies, drawings, and motor vehicles registered by the owner.

SCHEDULE 3. Where monthly book records of inventories are not kept, monthly figures may be fairly estimated for merchants or manufacturers by the "purchase and sales" accounting method. Specimen forms of such an inventory computation may be obtained from the Department of Taxation, Individual Section, Columbus 15.

Grain processed otherwise than by hulling, cleaning, drying, grading, or polishing, in addition to being listed on Grain Form 930B, is also to be listed in this schedule.

Supplies of a manufacturer such as fuel, lubricating oil, and other consumable items not a component part of the manufactured product and not held for sale, and office furniture, machines, supplies and equipment, also corresponding items of a merchant, are not to be listed in Schedule 3, but in Schedule 4 at year-end value.

SCHEDULE 4. Inventories of taxpayers in business other than manufacturing and merchandising, such as hotels, laundries, repair shops, and garages, are to be listed here at year-end value.

CLASSIFICATION. A CLASSIFICATION AS MANUFACTURER will be strictly construed. It does not include service industries, repairing, grinding, cleaning, compounding individual prescriptions, assembling or working materials into buildings, bridges, roads or other forms of real property.

Agriculture is farming or truck gardening or the raising of live stock on farms. The cultivation of plants in green houses is not included in such term.

For **PARTICULAR OR ADDITIONAL INFORMATION**, communicate with the County Auditor of your county or with the Tax Commissioner, State Office Building, Columbus 15.

RATES OF TAXATION FRANKLIN COUNTY

TAXING DISTRICT	Tax Rate (Mills on Dollar)	TAXING DISTRICT	Tax Rate (Mills on Dollar)	TAXING DISTRICT	Tax Rate (Mills on Dollar)
1. Columbus Corp.	16.80	33. Jefferson Township	12.20	63. Westerville S. D.	15.90
2. Bexley Corp.	13.60	34. Licking Co. S. D.	13.95	64. New Albany Corp.	20.40

[fols. 1290-1291] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1292] CAUSE ARGUED AND SUBMITTED—October 9, 1953
(Omitted in printing)

IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUDGMENT—Filed October 16, 1953

This case came on to be heard upon the oral arguments and briefs of the attorneys for the parties and upon the five-volume record;

And it appearing that, contrary to appellant's contention, the Government did establish by competent evidence appellant's net worth at the start of the tax years in question sufficiently to present an issue for the jury's determination; and that the verdict of the jury, finding defendant guilty on counts 2, 3 and 4 of the indictment is amply supported by substantial evidence, it being well settled that the inconsistency of the verdicts of the jury—not guilty on count 1 and guilty on counts 2, 3 and 4—is not an adequate ground for reversal, *Dunn v. United States*, 284 U. S. 390; *Ross v. United States*, 197 F. (2d) 660 (C. A. 6), certiorari denied 344 U. S. 832;

And it appearing that there was no reversible error in the admission of any portion of the testimony of the special agent of the Bureau of Internal Revenue, Francis J. Clager; and that, when recess was called after several hours of deliberation on the part of the jury and the judge stated to the jury that he hoped the jurors "would make a sincere effort to compromise and adjust their differences and reach a verdict, if possible", there was no exception taken by the appellant to the admonition of the judge to the jury;

[fols. 1293-1294] And it appearing further that the court delivered to the jury a clear and correct charge, in which

the rights of appellant were fully protected with extreme care, and no exception being taken to the charge;

And it appearing that no reversible error in any particular inheres in the entire trial procedure;

The judgment of the district court, fining the defendant \$10,000 and imposing 18 months imprisonment on each of counts 2, 3 and 4, to run concurrently, is affirmed.

[fol. 1295] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 11661

[Title omitted]

PETITION FOR RE-HEARING AND STAY OF MANDATE AND EXECUTION—Filed November 3, 1953

Now comes the appellant, David Friedberg, by and through his counsel, and respectfully petitions that a re-hearing of his appeal should be granted in accordance with Rule 28 of this Court.

The petitioner wishes to call the court's attention to certain facts and legal propositions which, he submits, were not considered, and, in our opinion, as a result a shocking decision was affirmed.

I

In the recent case of *Stevens v. United States*, 206 F. (2nd) 64, (CA 6), this court permitted summaries of books, but said:

"an arbitrary or unreasonable interpretation by the Government agents would have properly been rejected by the Court, but an interpretation by an experienced [fol. 1296] accountant which is considered a reasonable and proper one by the court, was properly received in evidence as tending to show what the books reflected with respect to the different expense items involved."

Francis J. Clager was an accountant with but a year and a half's experience, and if his testimony is given credence in any regard, any person can be convicted under the net worth method, no matter how honest his returns may have been. We submit that because of the lengthy record, the court did not understand the full significance of his purported evidence. He gave an argument, not a summary of any books.

For example, the conclusion of Clager is:

"I did not include currency at the end of the year 1947, because my *investigation* disclosed no *evidence* which would permit me to put such a figure of currency in my schedule" (R. 371).

We submit in making such an answer Clager was acting as a witness, judge and juror. He was not testifying to facts, but making an argument on matters, *which may or may not* have been before the jury.

Again on page 433, after stating that he did not include currency, the question was asked—"Will you tell us briefly, why not?", and Clager was permitted to narrate "the following evidence, etc."

Such a procedure is without any legal sanction. It is not a summary, but a purely arbitrary and unreasonable interpretation. The result is not in line with *Johnson v. United States*, 319 U. S. 503, but is the kind of evidence expressly condemned in *Kirsch v. United States*, 174 F. (2nd) 595, 601 (CA 8), and *United States v. Caserta*, 199 F. (2nd) 905 (CA 3). In those cases it was held that there was [fol. 1297] "no foundation for the assumption that all deposits constituted income." Here, there was no foundation for saying Friedberg had no cash on hand in 1944.

In this case there is no foundation to assume, because \$53,625.00 of bonds and \$19,600.00 cash in envelopes were voluntarily disclosed in a deposit box, that all of it constituted income for the years 1944, 1945, 1946 and 1947, and that none of it was acquired prior to that time. Under these circumstances Guy Forsythe, a certified public accountant with the best known firm in Columbus, Ohio, was able to testify that it would be "an arbitrary assumption if you omitted cash from the beginning" (R. 1108 et seq.).

The evidentiary ruling which admitted this testimony has flatly overruled the constitutional rule which places on the prosecution the burden of showing a lack of cash on hand. The court shifted the burden of proof from the prosecution to the defendant solely because an inexperienced accountant testified, as a conclusion, that he was unable to discover evidence which would indicate that the defendant possessed cash. A negative finding, by an inexperienced agent, whose purpose and intention is to prosecute, is held to be sufficient *evidence* to sustain a burden of proof.

We submit that both the District Court and this court have indulged in an *arbitrary and unreasonable interpretation* in permitting such purported evidence to go before the jury. We submit that Exhibit 7 (R. 1247-8) is far too remote to prove a starting point in 1944. The procedure of the Government is without foundation. See *United States v. Spaulding*, 293 U. S. 489, 506; *Dexter v. Hall*, 15 Wall (U. S. 9, 26; *United States v. Ross*, 92 U. S. 281; *Mackett v. United States* (CA 7), 90 F. (2nd) 462, 465; *United States v. Cole* (CA 7), 82 F. (2nd) 655; *United States v. Stephens* (CA 9), 73 F. (2nd) 695.

[fol. 1298] We submit that the language used by the Eighth Circuit in reversing a physician's conviction is exactly in point in this case:

"Ordinarily there is no reason to admit opinion evidence on a matter that is fully capable of proof and comprehension. And any such unnecessary opinion evidence in a criminal case that will inescapably be a plain expression of the witness' opinion of the defendant's guilt, even though by circumlocution should be scrupulously avoided. In the present case, as we have indicated, there was no reason to allow the witness to express his opinion upon the question asked either as a matter of lack of other proof of the fact involved or as a necessary aid in understanding of such other proof, and the admission of the opinion evidence was in our opinion prejudicial."

Wesson v. United States (CA 8), 164 F. (2nd) 50.

II

The net worth method of computing income may be used only when a taxpayer does not keep books, or when his books are inadequate or do not clearly reflect income. See 26 U. S. C. A. Sec. 41. There is no evidence to show that Friedberg ever had any more income than what he reported, and there is evidence to show he did have substantial cash and assets on hand before the starting point (R. 923, 962-67, 968 et seq., 984, 985).

Without the Clager testimony there was insufficient evidence to go to the jury. If the evidence was improperly admitted no matter how fair the charge of the court may have been, it does not correct the error. *Winebrenner v. United States* (CA 8), 147 F. (2nd) 322.

III

With the jury deliberating over four and a half hours, the court gave an instruction to the jury for it to compromise [fol. 1299] and adjust its difference. That is exactly what the jury did.

True no exceptions were taken, but a man should not be deprived of his liberty by such a method. Rather is the rule as set forth in *Bollenback v. United States*, 326 U. S. 607, and so well summarized in *United States v. Stoehr*, 100 F. Supp. 143, 152, to be applied:

"Notwithstanding what his counsel did, the defendant has a right to have his guilt or innocence found by a jury according to the procedure and standards appropriate for criminal trials in federal courts. If any error was therefore committed during the course of the trial which affected his substantial rights, the failure of counsel to call it to the attention of the trial court should not preclude its being noted and corrected."

IV

We submit that Friedberg did not have a fair trial, and most respectfully submit that probably because of the voluminous record has not had a fair review of the errors complained of, which are of a substantial nature. We submit that Clager's evidence, or more properly argument,

should be considered in the light of the *Kirsch, Caserta* and *Wesson* cases, as well as the court's own expression in the *Stevens* cases. Prejudice was injected into this case (R. 627), and with the rather cavalier type of affirmance, the defendant feels he has had neither a fair trial nor an adequate review.

CONCLUSION

We respectfully submit that when the court re-examines the testimony of the inexperienced Clager it will find that its admissibility poses a real question, and not one that can be lightly dismissed.

[fol.1300] Appellant and petitioner respectfully urge that a re-hearing be granted, and that the mandate be stayed pending the disposition of the petition, or in the alternative, if the petition is not granted, that the court stay the mandate in this cause for thirty (30) days in order for the petitioner to apply to the Supreme Court of the United States for a writ of certiorari to review the decision of the court.

Robert N. Gorman, James W. Hengelbrok, 808 Traction Building, Cincinnati 2, Ohio, Attorneys for Petitioner-Appellant.

The undersigned, Robert N. Gorman, attorney for the petitioner does certify that in his opinion the foregoing petition for re-hearing is well founded, and is not presented for the purpose of creating a delay, but is filed in good faith.

Robert N. Gorman.

[fol. 1301] IN UNITED STATES COURT OF APPEALS

ORDER DENYING REHEARING AND GRANTING STAY OF MANDATE
—Filed November 30, 1953

The petition for rehearing and stay of mandate and execution filed by appellant herein is denied.

The request for stay of mandate for a period of thirty days, in order to permit application for certiorari to the United States Supreme Court is granted.

[fol.1302] Clerk's Certificate to foregoing transcript omitted in printing.

November 1, 1940.

A taxpayer who has been in business for twelve months and whose Federal income tax return is on a special fiscal year basis, must list his taxable property (other than deposits as above) and furnish a balance sheet as of the end of such fiscal year and list the income yield of his investments as paid within that year—unless the Tax Commissioner has authorized or required a different date or period.

For investments transferred to a trustee, see Section 5368-1, G. C., and instructions on page 2 of this return.

Users of Federal Election Form 912 have a 1946 Federal income basis for productive investments in lieu of an income yield basis.

PLACE IN WHICH LISTED. Tangible Personal Property is generally to be listed in the taxing district where physically

a merchant, are not to be listed in Schedule 3, but in Schedule 4 at year-end value.

SCHEDULE 4. Inventories of taxpayers in business other than manufacturing and merchandising, such as hotels, laundries, repair shops, and garages, are to be listed here at year-end value.

CLASSIFICATION. A CLASSIFICATION AS MANUFACTURER will be strictly construed. It does not include service industries, repairing, grinding, cleaning, compounding individual prescriptions, assembling or working materials into buildings, bridges, roads or other forms of real property.

Agriculture is farming or truck gardening or the raising of live stock on farms. The cultivation of plants in green houses is not included in such term.

For PARTICULAR OR ADDITIONAL INFORMATION, communicate with the County Auditor of your county or with the Tax Commissioner, State Office Building, Columbus 15.

RATES OF TAXATION FRANKLIN COUNTY

TAXING DISTRICT	Tax Rate (Mills on Dollar)	TAXING DISTRICT	Tax Rate (Mills on Dollar)	TAXING DISTRICT	Tax Rate (Mills on Dollar)
1. Columbus Corp.	16.80	33. Jefferson Township	12.20	63. Westerville S. D.	15.90
2. Bexley Corp.	13.60	34. Licking Co. S. D.	13.95	64. New Albany Corp.	20.40
3. Blendon Township	10.70	35. Reynoldsburg S. D.	14.10	65. Pleasant Township	12.40
4. Mifflin Twp. S. D.	13.70	36. Madison Township	10.20	66. Darby Twp. S. D.	12.40
5. Plain Twp. S. D.	17.10	37. Marion Twp. S. D.	10.90	67. Georgesville S. D.	11.70
6. Sharon Twp. S. D.	13.70	38. Pickaway Co. S. D.	10.50	68. Jackson Twp. S. D.	16.70
7. Minerva Park Corp.	17.10	39. Violet Twp. S. D.	12.40	69. Madison Co. S. D.	8.20
8. Westerville S. D.	13.10	40. Winchester S. D.	15.50	70. Prairie Twp. S. D.	7.20
9. Westerville Corp.	17.60	41. Groveport Corp.	13.40	71. Scioto Twp. S. D.	11.50
10. Brown Township	12.60	42. Winchester Corp.	18.30	72. Harrisburg Corp.	20.40
11. Norwich Twp. S. D.	13.60	43. Marion Township	12.00	73. Prairie Township	8.50
12. Clinton Township	12.04	44. Madison Twp. S. D.	11.30	74. Brown Twp. S. D.	13.00
13. Mifflin Twp. S. D.	14.90	45. Hanford Corp.	14.00	75. Norwich Twp. S. D.	14.00
14. Perry Twp. S. D.	13.10	46. Mifflin Township	13.80	76. New Rome Corp.	10.00
15. Sharon Twp. S. D.	14.90	47. Jefferson Twp. S. D.	11.60	77. Sharon Township	14.60
16. Franklin Township	11.00	48. Sharon Twp. S. D.	13.80	78. Delaware Co. S. D.	12.40
17. Col. Ind. S. D.	11.54	49. Truro Twp. S. D.	12.90	79. Perry Twp. S. D.	12.80
18. Grandview Hts. S. D.	18.40	50. Gahanna Corp.	14.00	80. Westerville S. D.	14.00
19. Jackson Twp. S. D.	17.20	51. Norwich Township	12.60	81. Worthington S. D.	21.20
20. Norwich Twp. S. D.	13.20	52. Special S. D. No. 1	13.50	82. Riverlea Corp.	23.20
21. Prairie Twp. S. D.	7.70	53. Hilliard Corp.	17.20	83. Worthington Corp.	26.40
22. Grandview Hts. Corp.	20.00	54. Perry Township	12.50	84. Truro Township	12.80
23. Marble Cliff Corp.	19.40	55. Franklin Twp. S. D.	10.90	85. Madison Twp. S. D.	10.10
24. Valleyview Corp.	14.00	56. Grandview Hts. S. D.	18.30	86. Reynoldsburg S. D.	13.40
25. Hamilton Township	12.30	57. Sharon Twp. S. D.	14.30	87. Violet Twp. S. D.	12.30
26. Madison Twp. S. D.	10.00	58. Washington Twp. S. D.	15.80	88. Reynoldsburg Corp.	15.80
27. Marion Twp. S. D.	10.70	59. Worthington S. D.	20.90	89. Washington Township	17.30
28. Lockbourne Corp.	14.10	60. Upper Arlington Corp.	17.10	90. Norwich Twp. S. D.	14.60
29. Obetz Corp.	14.00	61. Plain Township	19.90	91. Plain City S. D.	14.50
30. Jackson Township	17.20	62. Blendon Twp. S. D.	13.50	92. Dublin Corp.	19.90
31. Urbancrest S. D.	15.00				
32. Grove City Corp.	19.50				

1287
1289

[fols. 1303-1304] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—June 7, 1954

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

A petition for rehearing having been filed in this case upon the denial of a petition for writ of certiorari;

Up-on consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order of March 8, 1954 denying certiorari be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 7, 1954.

[fols. 1305-1310] DESIGNATION OF PORTIONS OF RECORD TO
BE PRINTED—filed July 1, 1954

(Omitted in printing)

[fols. 1311-1316] CROSS-DESIGNATION OF ADDITIONAL PARTS
OF RECORD TO BE PRINTED—filed July 9, 1954

(Omitted in printing)

Office - Supreme Court, U. S.
FILED
DEC 23 1953
HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No.  18

DAVID FRIEDBERG,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

ROBERT N. GORMAN,
STANLEY A. SILVERSTEEN,
Attorneys for Petitioner,
808 Traction Building,
Cincinnati 2, Ohio.

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**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Petitioner, David Friedberg, prays that a writ of certiorari issue to review an order and judgment entered by the Court of Appeals for the Sixth Circuit on October 16, 1953, and the order denying the petition for a rehearing, entered on November 30, 1953. Said order and judgment affirmed a judgment whereby petitioner was convicted and sentenced by the District Court for the Southern District of Ohio, Eastern Division, to serve a sentence of eighteen months and to pay a fine of Ten Thousand (\$10,000.00) Dollars and costs for an alleged violation of the provisions of Title 26, Section 145 (b), of the

United States Code—wilfully filing false and fraudulent income tax returns for the years 1945, 1946, and 1947.

OPINIONS BELOW

The District Court wrote no opinion. The Court of Appeals did not file a written opinion, but entered a two-page order which summarily passed on the serious issues presented by this case. This order of the Court of Appeals is set forth in the record, and has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 16, 1953, and the petition for rehearing was denied on November 30, 1953, at which time the execution of the mandate was stayed pending filing of this petition. The jurisdiction of this Court is invoked under the provisions of Title 28, Section 1254, of the United States Code.

QUESTIONS PRESENTED

The questions presented in this petition are:

1. Did the Government establish the taxpayer's basic net worth at the start of the taxable years in question sufficiently to present an issue for jury determination?
2. Should the District Court have permitted revenue agent Clager to have given his conclusions why no cash was allocated, prior to 1945, to petitioner's net worth?
3. Was the Court's supplemental instruction to the jury to compromise and adjust their differences prejudicial error?

STATUTE INVOLVED

The petitioner was convicted for alleged violations of the provisions of Title 26, Section 145 (b), (Internal Revenue Code), which reads as follows:

“(b) Failure to collect and pay over tax, or attempt to defeat or evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (26 U. S. C. 1946 Ed., Sec. 145 [b].)”

Rules 30 and 52 (b) of the Federal Rules of Criminal Procedure, which read as follows, are likewise involved:

“Rule 30.

... No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.”

“Rule 52.

(b) Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the Court.”

STATEMENT OF CASE

This is one of the very first cases in which the Government proceeded strictly on an increased net worth basis, without any effort made to show additional income in any one year or excessive expenditures at any time. The theory of the prosecution was based solely upon the assumption that the petitioner, David Friedberg, had no cash or currency in his possession at the end of 1941, 1942, 1943, or 1944. Throughout the briefs, and in oral argument, counsel

for both sides have agreed that the appeal rises or falls on the issue of the existence or the non-existence of cash on hand prior to December 31, 1945. The keystone of the Government's case was its Exhibit 2, a net worth statement for the years 1941 through 1947, prepared by revenue agent Francis J. Clager some time in 1948. The starting point was December 31, 1941, and the net worth statement does not credit the petitioner with any cash on hand until December 31, 1945. It is interesting to note that, with the exception of the cash and bonds which were voluntarily disclosed by the petitioner in 1947, at the beginning of the investigation, and with the exception of the failure to credit the petitioner with cash on hand prior to December 31, 1945, all the items on Exhibit 2 were agreed to by stipulation (R. 172, 343).

The background of the case is summed up by District Judge Underwood in passing sentence:

"You have a fine family, as your counsel said. You are not a racketeer, you are not one of the big fish in escaping tax, but a jury said, Mr. Friedberg, that you are guilty" (R. 1171).

David Friedberg was not a gambler, or racketeer, such as those against whom the net worth method is ordinarily employed. David Friedberg owned and operated a tailoring business known as The Buckeye Tailoring Company at 180 South Third Street in Columbus, Ohio. The firm operated under the name of American Mill Tailors, and sold at wholesale as the Jackson Tailoring Company, but there was only one bank account, through which all checks cleared (R. 729, 730). Petitioner and two others had owned and operated American Mill Tailors since about 1920, first in Dayton, Ohio, and then, from 1923, in Columbus (R. 559). In 1941 this corporation was dissolved, and

from that date David Friedberg operated it himself (R. 728).

Friedberg was indicted for understating his income not only for the years 1945, 1946, and 1947, but was also indicted for the year 1944, and, strangely, in a net worth increase case, the jury acquitted for 1944, but found him guilty for the three following years.

The entire appeal centers around a sum of cash and bonds which the petitioner voluntarily disclosed to agent Curtis and deputy collector Nerny.

An investigation of the petitioner's finances was begun in the fall of 1947, Friedberg first being questioned by a revenue agent on about September 20, 1947. On October 10, agent Curtis asked if Friedberg owned any bonds. Friedberg said that he did, and that they were in a safety deposit box belonging to his wife, which was in her maiden name. The two men were joined by a deputy collector, and the three immediately proceeded to the bank and examined the box. Therein was found \$19,600.00 in cash, and \$53,625.00 (face value) of United States Bonds.

After a thorough investigation, lasting some time, an indictment was filed on December 15, 1950. Despite the fact that Friedberg and his wife insisted that the bonds and currency were the savings of his wife, who had managed their funds since their marriage in 1915, the agents arbitrarily allocated the \$70,087.50 as income in the years 1944, 1945, 1946 and 1947. Although Friedberg reported a gross income for the years 1945, 1946, and 1947, of \$37,471.65, \$58,782.36 and \$64,623.91 respectively (Ex. 1C, 1D, 1E), the prosecution contended in the indictment that he understated his net income for those years by \$19,656.82, \$18,091.41, and \$35,053.86 respectively. The returns indicate a rather high gross for an operation of the modest scale which petitioner conducted, but the agents claimed that he netted \$35,053.86 additional in 1947. The jury

acquitted on Count I (1944), where the understatement of net income was claimed to be \$13,628.32.

In the safety deposit box were found various envelopes. One contained \$2,000.00 cash, and was marked "1945." One contained \$5,000.00, and was marked "1946." The balance of \$12,600.00 in cash was found in unmarked envelopes. Thereupon, the agents allocated \$2,000.00 as income in 1945, \$5,000.00 as income in 1946, and \$12,600.00 as income in 1947. The bonds were allocated as income in the years purchased.

Thus, the case was resolved into one issue. Had the Friedberg's accumulated \$70,000.00 in cash (or other items) by 1944, as they testified that they had, or was the sum found in the deposit box all earned in 1945, 1946, and 1947, as the prosecution alleged? The legal issue which resulted is whether the prosecution proved the net worth starting point sufficiently to permit the District Court to present the factual issue to the jury for determination.

The prosecution did not attempt to show any unreported income in the years covered in the indictment. The trial, and the appeal, centered around the "Cash" item on the net worth statement (Ex. 2). While the prosecution offered a hodge-podge of vague, remote, circumstantial evidence, susceptible of various inferences and conclusions, as will be treated later, the only direct testimony concerning the net worth schedule treatment of cash on hand was that testimony of agent Clager which appears at pages 371 et seq. and 443 to 445 of the record.

At page 369, defense counsel asked Clager, on cross-examination:

"You gave no credit to the defendant for any cash in the year of 1941, did you, Mr. Clager?"

After three pages of sparring on this simple question, over the objection of defense counsel, the Court instructed

the witness to answer and to explain his answer. The witness said:

"I did not include currency at the end of the year 1941 because *my investigation disclosed no evidence* which would permit me to put such a figure of currency in my schedule" (R. 371). (Emphasis ours.)

Later, on re-direct examination, the witness Clager was asked why he did not, in the schedule, credit Friedberg with any cash until 1945. He had previously admitted (R. 369) that, if the Friedberg's did have cash, the net worth statement would be inaccurate, and (R. 373, 376) that he did not know of his own personal knowledge whether Friedberg had any cash on hand at the beginning point, or even during any given year. Despite his lack of personal knowledge, he proceeded to give his conclusions, based on hearsay statements of others, and on assumptions. He related various financial incidents, which will be discussed in detail later, drew the most damaging of several possible inferences from the incidents, and then blithely skipped for six years, from October 30, 1939, the date of the last of these incidents, to December 31, 1945 (when cash was first credited), by saying:

"I also examined the taxpayer's source of capital as shown by his records for the years 1941 and 1942 and found no indication of currency from an undisclosed source. In other words, all funds flowed from known assets of the taxpayer's bank accounts. I also found that in analyzing the bank account just prior to the period under review, that all deposits were from known sources.

"And so, for those reasons, I could see no reason why I should give consideration, or rather, include in this statement which I have prepared an amount of currency, which he states he would have" (R. 445).

The defense immediately but vainly moved that this conclusion be stricken, having previously pointed out that the witness was usurping the function of the jury in giving a pure opinion on the ultimate issue of fact.

Finally, after the jury had been deliberating for four and one half hours on Thursday and Friday, January 10 and 11, 1952, the District Court called in the jury to go to lunch. Without any request from either side, the Court said (R. 1146) in part:

"The Court will stand in recess until one-thirty. The Court may say to the jury at this time that I want you to make an honest and sincere effort to reach an agreement as to the merits of this case. I do not want you to shirk your duty. I want you to be fair to the Government, the United States, and the defendant. Nevertheless, this case has taken many days to try, and *I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict, if possible.*" (Emphasis ours.)

The jury apparently took the suggestion from the Court and within an hour and forty-five minutes returned with this purely compromise verdict.

SPECIFICATIONS OF ERROR

The Court of Appeals erred:

1. In holding that the prosecution sustained its burden of proof in establishing the petitioner's net worth at the start of the tax years in question sufficiently to present an issue for jury determination.
2. In holding that there was no reversible error in the admission of the opinion testimony of agent Clager.
3. In holding that the District Court's supplemental instruction to the jury to compromise and adjust their differences was not prejudicial error.

REASONS FOR GRANTING THE WRIT

1. Identity of Question Presented with a Pending Case.

On November 16, 1953, this Court granted review of *Remmer v. United States*, No. 304, on certiorari to the Court of Appeals from the Ninth Circuit, reported as 205 Fed. (2d) 277. One of the prime questions in the *Remmer* case is identical with the prime question in this case, and a writ of certiorari should issue in this case pending the final decision in the *Remmer* case. The identical point is the basic question of whether the Government may force the burden of proof on a defendant in a tax case, merely by the device of using the net worth method, and forcing the defendant, at his peril, to assume the burden of proving that he had cash on hand.

2. The Prosecution Failed to Sustain Its Burden of Proof as to the Starting Point Net Worth, and Forced the Petitioner to Assume the Burden of Proof as to Cash.

The petitioner submits, most strongly, that the time has come for this Court to end the conflict between the Courts of Appeal on the proper manner of establishing a starting point in a net worth case. While the Circuit Courts, generally, acknowledge that a net worth method proves nothing unless a starting point is established, there is a deep and serious split between the Circuits as to the manner of establishing the starting point. See opinion of Hutcheson, Chief Justice, Court of Appeals for the Fifth Circuit, in *Demetree v. United States*, No. 14488, decided November 24, 1953, not yet reported.

In *Venuto v. United States*, 182 Fed. (2d) 519, the Third Circuit held that the prosecution must still prove its case by traditional rules even though proceeding under the net worth method. In *Bryan v. United States*, 175 Fed. (2d) 223, the Fifth Circuit, in ruling on a net worth case, said at page 227:

"The evidence, being circumstantial, must exclude every reasonable hypothesis other than the guilt of the Defendant."

In *United States v. Fenwick*, 177 Fed. (2d) 488, the Seventh Circuit used almost the same language as the *Bryan* case (p. 490), and said:

"Evidence of mere probability of guilt, of course, is not sufficient."

The Courts of Appeal of some of the Circuits have discarded this traditional approach to a criminal case. For so doing, they were roundly criticized by the Court for the Third Circuit in *United States v. Caserta*, 199 Fed. (2d) 905, at page 907:

"The cases show, however, a rather *surprising rule* that when the discrepancy between increased net worth and reported income is shown, the *burden of explanation shifts to the taxpayer*, at the same time repeating the usual criminal law rule that the burden throughout a criminal case is *upon the prosecution*." (Emphasis ours.)

The Courts of Appeal which follow the rule just criticized, such as, for example, the Ninth (*Remmer v. United States*, 205 Fed (2d) 277, now pending in this Court as No. 304), the Eighth (*Schuermann v. United States*, 174 Fed. (2d) 397), and obviously the Sixth, in the instant case, are more concerned with the problem of the Government in tax-collecting, and would lighten its load by permitting it to shift the burden of proof where a net worth method is used. Why this particular method of accounting should enjoy special privileges is not clear.

A resumé of the evidence which the Court of Appeals in the instant case found sufficient to sustain the prosecution's burden of proof, will illustrate the price which the individual pays in order to facilitate tax collection.

This is not a case where the taxpayer's own statement, or a clear insolvency, furnishes the starting point. To the contrary, the prosecution rejected the starting valuation which the petitioner and his wife both testified to at length during the trial.

The trial opened with the prosecution calling witness after witness, and introducing document after document, to show that the petitioner concealed income through the use of a bookkeeping arrangement which was styled "Friedberg loan." Finally, on cross-examination, Special Agent Clager had to admit not only that all this money had been returned as income (R. 309, 396), but also that, including these items, more funds were reported as income than were shown on the books (R. 399-400).

Since the "Friedberg loan" turned out to be merely sloppy bookkeeping, the prosecution was left with a set of circumstantial evidence too remote to prove anything, and with the opinion testimony of agent Clager, which was so improper that it should have been stricken when it was objected to.

a. Foreclosure on the Bedford Avenue (in 1934) and on the Sheldon Avenue (in 1935) real estate. Actually, agent Clager admitted that the Bedford Avenue (R. 438) property had been sold by Friedberg in 1928, and that the Sheldon Avenue (R. 434) property had been sold by Friedberg in 1929. In both cases the grantee merely assumed the existing mortgage, which, of course, did not extinguish Friedberg's liability on the mortgage. However, several years later, at the foreclosures, Friedberg felt that he had no interest in the property or the proceedings (R. 837, 843).

b. Foreclosure on the Nelson Road property. Friedberg testified (R. 909 et seq.) that he and his wife were dissatisfied with the property, and got permission to rent it. As soon as they did so, foreclosure was instituted, provoking

them, in 1934. None of the foreclosure testimony shows that it would have been to Friedberg's financial advantage to satisfy the judgments.

c. Printing Company unsatisfied judgment. In 1936 a writ of execution was returned "Nothing found upon which to levy" (R. 1241). However, the return of levy is hearsay, and the testimony does not show if the deputy sheriff actually made a search, or just filed an office return. Also, it need scarcely be pointed out that the non-payment of judgments makes it easier to accumulate savings.

d. Entries into safety deposit box. An analysis was offered to show that petitioner entered his box more frequently in the latter years than he did in the earlier years. If, as the prosecution must, and does, claim, Friedberg had no cash in this box from early 1941 until the end of 1945, then one must assume that Friedberg kept blank papers in the box during that period, and visited the box to examine the blank papers.

e. Loan application (R. 1247). This was offered because therein, in 1939, petitioner listed \$150.00 for his cash, and a cashier's check for \$2,000.00. Petitioner testified that he was merely listing enough to obtain the loan (R. 891-892). Incidentally, the application also fails to list the securities which Government Exhibit 2 N shows petitioner owned at the same time.

This type of evidence is too remote and too speculative to meet the test set forth in *Curley v. United States*, 160 Fed. (2d) 229, 232 (C. A. D. C.):

"The true rule, therefore, is that a trial judge in passing upon a motion for directed verdict of acquittal, must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact, a reasonable person might fairly conclude guilty beyond a reasonable doubt."

This evidence is buttressed in no wise by the only evidence on the years 1939 to 1945, namely, a mere opinion by agent Clager that his investigation did not permit him to credit cash during those years (R. 371).

The instant case is the perfect example of the line of cases criticized by the Fifth Circuit in a case decided as recently as November 24, 1953, No. 14488 on its docket, and not yet reported (*Demetree v. United States*) (page 3 of Folio):

"This kind of latitudinous allowance of *the admission and use of conclusions* as evidence and the submission of the case to the jury without a scrupulous adherence to the theory, has resulted in a tendency to accept, if not in the complete acceptance of, the idea that in a case tried by this method, ordinary *rules of proof may be relaxed if not disregarded*. Further and more prejudicial to a defendant, there has grown up a kind of ancillary theory that the government, by introducing proof of deposits, expenditures, etc., having put up what it calls a *prima facie* case, the defendant finds himself jockeyed out of the position the law affords him, of insisting that the government establish his guilt by legal and credible evidence beyond a reasonable doubt. This is accomplished by requiring him to prove himself innocent by assuming the burden of overcoming the prejudicial effect of the mass of exhibits, *estimates, conjectures, and conclusions* which the government has been allowed to get into the record, upon the apparent theory that it is *up to the defendant to explain all of it away as part of his burden to prove his innocence.*" (Emphasis ours.)

The opinion of this Court in *United States v. Johnson*, 319 U. S. 503, has been distorted far beyond the intention of this Court. It is time for this Court to restate the law.

3. The Opinion Testimony of Agent Clager Was Grossly Improper, and Should Have Been Excluded.

The Courts of Appeal have also been relaxing the rules as to the use of, and the admissibility of, testimony of accountants as expert witnesses. The Court of Appeals for the Sixth Circuit recently said [*Stevens v. United States*, 206 Fed. (2d) 64]:

“an arbitrary or unreasonable interpretation by the Government agents would have properly been rejected by the court, but an interpretation by an experienced accountant which is considered a reasonable and proper one by the court, was properly received in evidence as tending to show what the books reflected with respect to the different expense items involved.”

The difficulty lies in the words “reasonable and proper.” An analysis of the instant case illustrates graphically the limits to which the lower courts are going.

To begin with, Special Agent Clager was not an experienced accountant, but was graduated from college in 1940, and became connected with the Bureau of Internal Revenue in 1946, a year before this investigation began. He was not a Certified Public Accountant (R. 367, 366, 367). He did not know, personally, if Friedberg ever had any cash (R. 373, 376).

However, the only direct evidence on the issue of cash on hand was the pure opinion of Special Agent Clager. When asked on cross-examination simply if he credited Friedberg with cash in 1941, Clager volunteered:

“I did not include currency at the end of the year 1947, because *my investigation* disclosed no *evidence* which would permit me to put such a figure of currency in my schedule” (R. 371). (Emphasis ours.)

This answer was given with the permission of the Court, over the objection of the defense.

The Court persisted in its opinion that such testimony was competent, and a short time later, on re-direct examination, over the objection of the defense, Clager was permitted to answer:

"Based on the following evidence I did not include currency in my financial statement. . . ."

(Narrating the circumstantial events which transpired in the 1930's.)

"And so, for those reasons, I could see no reason why I should give consideration, or rather, include in this statement which I have prepared an amount of currency which he states he would have" (R. 443-445).

Such testimony is a far cry from the customary hypothetical question. It was an argument, the same as the District Attorney could later make to the jury. And, worst of all, it permitted a witness to argue, in his testimony, on the ultimate question to be determined by the jury. As was said in *United States v. Ware*, 110 Fed. (2d) 739, 742 (C. A. 5):

"The courts have held repeatedly that it is not permissible for an expert to give his opinion upon the ultimate question to be determined by the jury."

The admission of Clager's opinion was clearly in violation of a long-established rule in this Court, which was well expressed in *United States v. Spaulding*, 293 U. S. 498, 506:

"Moreover that question is not to be resolved by opinion evidence. It was the ultimate issue to be decided by the jury upon all the evidence in obedience to the judge's instructions as to the meaning of the crucial phase and other questions of law. The experts ought not to have been asked or allowed to state their *conclusions on the whole case.*" (Emphasis ours.)

4. The District Court's Supplemental Instruction to the Jury to Compromise and Adjust Their Differences Was Reversible Error.

The supplemental instruction to the jury raises a comparatively new, but a very deep problem in the interpretation of the Federal Rules of Criminal Procedure.

After the jury had deliberated on Thursday and Friday, January 10 and 11, 1952, the Court called the jury in for the noon recess. Without request from either side, the Court said (R. 1146):

"The Court will stand in recess until one-thirty. The Court may say to the jury at this time that I want you to make an honest and sincere effort to reach an agreement as to the merits of this case. I do not want you to shirk your duty. I want you to be fair to the Government, the United States, and the defendant. Nevertheless, this case has taken many days to try, and *I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict, if possible.*" (Emphasis ours.)

The jury apparently took the suggestion from the court, and within an hour and forty-five minutes returned with a compromise verdict of not guilty for 1944, and guilty for 1945, 1946 and 1947.

The issue presented is the effect of Rule 30 of the Federal Rules of Criminal Procedure, when Rule 52 (b) also is applicable. Specifically, where a supplemental, rather than a regular, instruction is given to the jury, need an exception be taken, or does Rule 52 (b) serve in the place of a formal exception? To state the question practically, should petitioner be denied a new trial because his trial counsel failed to object to this off-the-cuff charge, and because trial counsel, in arguing a motion for new trial, first claimed this obvious error, and then waived it (R. 1162, 1163).

The District Judge apparently recognized the error, for, during argument on the motion for acquittal or a new trial, he inquired of defense counsel at least five times (R. 1161, 1162, 1163) whether error was claimed.

The established rule was well stated in *United States v. Raub*, 177 Fed. (2d) 312, 315 (C. A. 7), relying on *Screw v. United States*, 325 U. S. 91, 107:

“It appears to be generally established now that—Rule 30 notwithstanding—in a criminal case involving life or liberty of a defendant, an appellate court may notice plain and serious prejudicial error in instructions even though it was not called to the attention of the trial court.”

The rule was also stated as recently as November 24, 1953, in an unreported case in the Fifth Circuit (No. 14488), *Demetree v. United States*, where error was found in the same sort of offhand supplemental instruction as is found here, and also where no exception was taken:

“The error dealt with in the fourth group, however, the court’s colloquies with, and instructions to, the jury in connection with the question of punishment, constituted reversible error.

“Our conclusion that the judgment should be reversed because of the error of the judge in inducing the verdict, notwithstanding the jury’s stated inability to agree, by stating to them that the defendant could be put upon probation or fined, and his ready assurance, in answer to the jury’s question as to his own attitude, in effect that he would be lenient, makes it unnecessary for us to consider in detail the grounds of error assigned in groups five and six” (page 6 of folio).

To the same effect is *United States v. Stoehr*, 100 Fed. Supp. 143, 152, which relies on *Bollenback v. United States*,

326 U. S. 607, and also *Battle v. United States*, 206 Fed. (2d) 441 (C. A. D. C.).

The Court of Appeals for the Sixth Circuit, in the instant case, is in conflict with the Seventh Circuit (*United States v. Raub*, supra), and the Fifth Circuit (*Demetree v. United States*, supra), and is mis-interpreting prior opinions of this Court on a vital issue of federal criminal law. This is clearly a case such as Justice Peckham described in *Burton v. United States*, 196 U. S. 283, 307:

“Balanced as the cause was in the minds of some of the jurors, doubts existing as to the defendant’s guilt in the mind of at least one, it was a case where the most extreme care and caution were necessary in order that the legal rights of the defendant should be preserved.”

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted, and the decision of the Court of Appeals for the Sixth Circuit, reversed. Certainly the case presents even more serious questions than are to be reviewed by this Court in *Remmer v. United States*, 205 Fed. (2d) 277 (C. A. 9), where certiorari has been granted.

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FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. **510** 18

DAVID FRIEDBERG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit**

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

THE BURDEN OF PROOF

The question presented under this topic is whether the record, minus the Clager testimony, contains sufficient evidence to permit the trial court to submit the case for jury determination. There is no question of weighing the evidence, as in *Glasser v. United States*, 315 U. S. 60, 80. Rather, the question is whether the evidence in this case, less the purported testimony of Clager, permits a reasonable person fairly to conclude guilt beyond a reasonable doubt, giving full play to the proper functions of the jury.

Curley v. United States, 160 F. (2d) 229, 232. (C. A. D. C.), certiorari denied, 331 U. S. 837.

The contention of petitioner is that the evidence produced by the prosecution, without Clager's opinion testimony, was too speculative and too remote to permit a jury to make a determination. Petitioner analyzed this evidence; he did so not to weigh it, but to show how speculative it was, how many inferences it was susceptible to, and how remote in point of time it was, solely for the purpose of illustrating that this evidence fails to meet the net worth test set forth in *Bryan v. United States*, 175 F. (2d) 223, 227 (C. A. 5):

"The evidence, being circumstantial, must exclude every reasonable hypothesis other than the guilt of the defendant."

and in *United States v. Fenwick*, 177 F. (2d) 488, 490 (C. A. 7):

"Evidence of mere probability of guilt, of course, is not sufficient."

Respondent recognized the remoteness of the evidence from the net worth starting point, by reverting to the long-discredited "Friedberg Loan" theory of concealment. Respondent attempts to fill the hitherto empty gap of several years' space by pointing out with suspicion that petitioner's wife kept his books from November 30, 1944, to the trial. But the sole charge which respondent places against her work is the use of the "Friedberg Loan" account. This suggestion of wrong-doing completely ignores that Clager, the star witness for the prosecution, admitted that all of the "Friedberg Loan" funds were reported as income, and that actually, there was probably an overstatement of income (R. 309, 396, 399-400).

Respondent relies chiefly on bald statements as to proof of the net worth starting point from admissions of defendants, general statements regarding financial condition,

business records, or specific conduct, and lists citations. But the question which petitioner presents is whether the speculative nature and the remoteness of the instant evidence do not require a reversal by this Court. That is the conflict which the respondent states it cannot find. *Bryan v. United States*, supra, and *United States v. Femwick*, supra, create the conflict. *United States v. Caserta*, 199 F. (2d) 905 (C. A. 3), at page 907, described the conflict:

“The cases show, however, a rather *surprising rule* that when the discrepancy between increased net worth and reported income is shown, the *burden of explanation shifts to the taxpayer*, at the same time repeating the usual criminal law rule that the burden throughout a criminal case is *upon the prosecution*.” (Emphasis ours.)

And the Chief Judge of the Court of Appeals for the Fifth Circuit warned of the serious and basic nature of the conflict, and of the need for guidance from this Court:

“This court and other courts have, in many cases, “(listing citations)” pointed out the dangers attending trials conducted in this way. Some of them have at times seemed to be more concerned with easing the difficulties attending the proof of guilt by this method than with preserving unimpaired the constitutional rights of a defendant, the fundamental safeguards and guarantees of his liberty. Most of the courts, however, confronted with the situation which this kind of case presents have withstood all attacks upon, and have held fast to, constitutional principles, including the fundamental premise upon which criminal trials proceed, that the defendant is presumed innocent until his guilt is established by legal or admissible evidence beyond a reasonable doubt.” *Demetree v. United States*, 207 F. (2d) 892, 894 (C. A. 5).

THE OPINION TESTIMONY OF CLAGER

Respondent bases its position here on three assumptions, which petitioner will show to be unfounded.

First respondent contends that defense counsel opened the door to the opinion testimony through cross-examination. Petitioner contends that the simple question "Did you credit Friedberg with cash in 1941?" does not require or justify the lengthy explanation which spilled forth from Clager. But even if an explanation were justified, Clager's response was not an explanation, and is grossly improper and prejudicial for other reasons. The factual evidence and testimony ended with the loan application of November 30, 1939. Clager attempted to fill the gap between this date and December 31, 1945, a period of over six years (when cash was first credited), by testifying that he made an investigation which "disclosed no evidence which would permit me to put such a figure of currency in my schedule." (R. 371) Clager did *not* testify as to *what he did, what, when, or where he investigated, to whom he talked, or what he discovered*. He merely said he investigated, and that he *concluded* that there was no cash. This is the ultimate in hearsay, culminating in pure conclusion. An argument such as the District Attorney might make in summation was presented to the jury through the lips of a witness, as if it were factual testimony.

In addition, it is assumed that Clager was an expert accountant, while his own testimony is to the contrary (R. 366, 367, 373, 376).

And finally, it is contended that the issue of cash or currency on hand at the starting point was not the ultimate fact for the jury to determine. Perhaps the size of the record caused the respondent to forget that every figure on the net worth statement (Ex. 2) was stipulated to, except the failure to credit petitioner with cash on hand prior to

December 31, 1945 (R. 172, 343). Cash was the sole factual issue.

The admission of this testimony exemplifies the cause for Judge Hutcheson's alarm.

THE SUPPLEMENTAL INSTRUCTION

Respondent concedes the rule in *Screws v. United States*, 325 U. S. 91, 107, but argues that such a rule does not apply to the instant case for three reasons. The instruction was impartial, no objection was raised, and no attempt was made to influence the judgment of the jury. Of course, a request to compromise, unless the jury intended to compromise, does have some influence on its judgment. Also, the question of partiality seems obvious. Friedberg was convicted in part, and acquitted in part. Compromise is not impartiality.

The only serious issue is raised by the failure to object. The waiver by defense counsel of a ground of error neither strengthens nor weakens his previous failure to object to the same error. An affirmative waiver of error carries no more weight than a negative refusal to voice an objection. Counsel is not invested with any authority to double the effect of his failure to object. The life or liberty of an accused should not depend on a distinction between a positive and a negative act of counsel. Petitioner will not burden the Court by re-stating the cases cited in the previous brief, which hold that a failure to except to a supplemental instruction does not prevent a reviewing court to apply Rule 52 (b) of the Federal Rules of Criminal Procedure, despite the provisions of Rule 30. It is sufficient to point out that the respondent bases its position on the rule that a trial court should have the opportunity to correct its own errors. But here, during argument on a motion for a new trial, only one week later, the trial court

clearly recognized the error, and five times asked defense counsel if such error was to be pressed. The trial court had ample opportunity to correct its error, which error was urged in the brief on the motion for a new trial (R. 1163). When counsel retreated from the stand taken in his brief, the court then proceeded with full deliberation to overlook the error. However, the trial court evidently felt some remorse about its inaction. For three months later, at the sentencing, it said:

“ . . . , and if the Court committed any error in its instructions, *an upper court will have to determine that fact.* (Emphasis ours.)

This treatment is another example of the procedure in net worth cases which is complained of in *Demetree v. United States*, *supra*. The chief interest of an increasing number of courts is to facilitate the collection of taxes, even if the rights of the taxpayer be impaired.

This is the only case petitioner has found wherein a jury is told “to compromise and adjust your differences” (R. 1146). It is the only case petitioner has found, where the charge was sustained, wherein members of the jury were not specifically told to adhere to their original views if they were convinced that the other members of the panel were wrong. This jury was not advised of its right to persevere in its convictions.

Here, in the second day of deliberation, this uncertain, confused jury was told to compromise its verdict. Such direction from a Federal bench dispelled the doubts and the uncertainty, and the jury promptly obeyed, with a compromise verdict.

“In all cases the constitutional safeguards are to be jealously preserved for the benefit of the accused, but especially is this true where the scales of justice may be delicately poised between guilt and innocence. Then error, which under some circumstances could not be

ground for reversal, cannot be brushed aside as immaterial since there is a real chance that it might have provided the slight impetus which swung the scales toward guilt." *Glasser v. United States*, 315 U. S. 60, 67.

This Court should clarify the effect of Rule 52 (b) upon Rule 30 by the application of the rule just cited.

CONCLUSION

The burden of proof question here presented is found also in *Remmer v. United States*, No. 304, wherein certiorari was recently granted. In addition, other serious questions of Federal Criminal Procedure, which are ripe for clarification from this Court, are presented in the instant case. Certiorari should be granted.

Respectfully submitted,

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**THE PROSECUTION FAILED TO ESTABLISH
THE STARTING POINT NET WORTH**

Respondent apparently does not comprehend the petitioner's argument. Petitioner divided his starting point argument into two propositions. The circumstantial evidence, upon which the prosecution relied solely, was too vague, and susceptible to too many inferences, as equally consistent with innocence as with guilt, to permit a jury to speculate with a man's liberty. Secondly, that same circumstantial evidence is too remote in point of time from the date on which petitioner is first credited with cash on hand.

The undisputed facts show that the entire prosecution was based on an arbitrary and rash allocation of cash and bonds which the petitioner had on hand in 1947, and

which he *voluntarily* disclosed to the agents. The record shows that if petitioner had any intention of defrauding the government, he did not have to, and would not, have made this disclosure. Yet the entire prosecution is based on the voluntary disclosure of assets, about which the agents did not know and could not have known anything. On his second visit to petitioner, at the very beginning of the investigation, the agent casually inquired if petitioner owned any bonds (R. 409). Co-operating completely, petitioner replied that he owned bonds, and that they were in the safety deposit box, although the agent was unaware of the existence of that or of any other box (R. 409, 85-86). Petitioner then insisted that they immediately examine the box, and they did so, together with a deputy collector (R. 409). The bonds (\$53,625.00) and the cash (\$19,600.00) which were found in the box (R. 83, 82) seemed to affect the judgment of the deputy collector, for he instantly made up his mind:

"Mr. Friedberg, we are going to take a slice of this."
(R.415).

This statement was made despite the fact that the investigation was just beginning, and despite the fact that the agent had not even seen petitioner's books (R. 408). After three years of investigation, the evidence produced was as weak as the judgment was rash, and no effort was ever made to claim any additional income, except that claimed to be represented by what was found in the safety deposit box.

The conviction here is based upon an assumption that apparent increases in visible net worth are attributable to current income, even without specific evidence of understatement of income, or without proof of a concealed source of taxable income. This is the assumption which

shifts the burden of proof to the defendant in criminal proceedings. To be specific, if this conviction is proper, a jury is permitted to disregard inferences which are highly consistent with innocence, to select an inference that the financial status of the petitioner is, in a general way, insecure, to assume that such insecurity continued without the slightest change for as long as fifteen years, from such assumed status to infer that *both* petitioner *and his wife* had no cash, to infer that the bond purchases were made from income which was current in the indictment years, and finally to conclude that, since the purchases exceeded his reported income, he must have failed to report income. The defendant would then have to assume the burden of dispelling these inferences and assumptions.

This house of cards is based upon evidence concerning the starting point which, as respondent apparently concedes (Br. 25), is highly susceptible to inferences consistent with innocence when viewed item by item, but which, as respondent claims (Br. 25), suggests an atmosphere of guilt when viewed in panorama. Petitioner urges that this is precisely the situation in which an untrained jury becomes confused, and in which a motion for acquittal must be directed to the analytical mind of the judge.

Respondent argues solely that conviction based upon this mass of vague, remote facts, conflicting inferences, assumptions, and inferences based on assumptions, has the sanction of this Court, under the rule of *United States v. Johnson*, 319 U. S. 503. This is the argument which has been used so often, to sustain convictions under the widest use of the net worth method, that it has evoked storms of protest from those Courts of Appeal which see no reason why an accused tax-evader should be tried with less due process than a murderer or a kidnapper. *United States*

v. *Caserta*, 199 F. (2d) 905, 907 (C. A. 3); *Demetree v. United States*, 207 F. (2d) 892, 894 (C. A. 5).

A reading of *United States v. Johnson*, *supra*, discloses a total lack of identity with the instant case. The most striking difference between the two cases appears at page 516 of the opinion of this Court in the *Johnson* case:

"The decisive issue of fact was whether Johnson's relation to these resorts was that of a *patron* or of a *proprietor*." (Emphasis added.)

A concealed source of unreported income is not an issue at all in the instant case, much less is it the "decisive issue." The only source of income during the indictment years was a tailoring business which petitioner had openly operated for twenty five years, a little, three-man business which respondent claims produced only \$2,587.00 in profits in 1943 (Ex. 1-H, fol. 14, R. 688), but a fantastic profit of \$42,000.00 in 1947 (R. 3). The decisive issue in the instant case is the establishment of the starting point net worth.

The importance of this difference between the *Johnson* case and the instant case is apparent in the development of the two cases. In the former, the critical fact is first proved that Johnson was a co-owner of the six gambling houses. It was then proved that the six gambling houses produced profits, or income. Johnson's returns proved that he had never reported income from the gambling houses. From such solid facts, the jury was permitted to infer that Johnson failed to report income "of a substantial amount." That he failed to report income "was reinforced" by proof of excessive expenditures. This solidly-established, step by step development is in complete contrast to the proof in the instant case. Here, the critical fact to be established is the net worth of petitioner

on December 31, 1945, which is the date on which petitioner is first credited with cash. The manner in which this critical fact was allegedly established is that the prosecution introduced proof of isolated facts back in the 1920's and the 1930's. These facts are susceptible of many and varying inferences, some consistent with innocence, some with guilt. The jury is asked to select that inference which, in a vague way, points to an unstable financial condition of petitioner. The jury must then assume that such vaguely unstable financial condition continues without change for as long as fifteen years. Based on this assumption, the jury must infer that the 1944-1947 bond purchases were made out of current income, which was not reported. Petitioner submits that the difference between a single inference, based on solidly established, "decisive" facts, contrasted with an inference, based on an assumption, based on an inference which is tenuously selected from conflicting inferences, is the difference between an affirmance and a reversal of a conviction. If the instant case is an example of a case proven under the net worth method, the *Johnson* case is not.

Even the evidence which was introduced in the *Johnson* case is completely different in nature from the evidence in the instant case. The dissent in the Court of Appeals characterized the evidence in the former case as "not even circumstantial," but as "direct and positive" (*United States v. Johnson*, 123 F. (2d) 111, 140). The only fault found with the evidence by the majority of the Court of Appeals is that the evidence proved conclusively that Johnson was merely a part owner, rather than a sole owner (*ibid*, p. 124). This Court reversed on the grounds that proof of partial ownership was sufficient, holding that it was "not a matter of tenuous speculation but of *solid proof* that there were winnings of a substantial amount which Johnson did not report." (Emphasis added.)

(*United States v. Johnson*, 319 U. S. 503, 517.) Contrasted with this "meticulous" proof, is the complete reliance on purely circumstantial evidence alone in the instant case (R. 648), together with the use of inferences, of assumptions, and of further inferences based on the assumptions.

In his Brief, petitioner pointed out the conflicting inferences to which the evidence is susceptible, employing that summary of the evidence which respondent so carefully selected in its Brief in Opposition (page 4 thereof), and which is now characterized as a partial account, in the Brief on the merits. In order to demonstrate the insufficiency of the evidence, the improper use of inferences, of assumptions based on the inferences, and of further inferences based on the assumptions, which is the real test here, rather than whether the jury was "entitled to disbelieve the testimony of petitioner and his wife "that they had accumulated cash (Res. Br. 18), petitioner will merely point out certain instances in which the prosecution evidence actually contradicted itself, and precluded the jury from drawing the inference of guilt.

1) The income tax filing record is supposed to support an inference as to the maximum income received by petitioner. However, the prosecution's expert testified that it was impossible to figure backwards to compute petitioner's pre-1942 income (fol. 22-23). And prosecution witness Cohen testified that petitioner received more salary (R. 36) than the theoretical computation allowed (e.g., Res. Br. 27), and the prosecution's chief investigator testified (R. 149) that he did not know what "cash would arise" from petitioner's trading in, and rental of, real estate.

2) The mortgage foreclosures are supposed to require an inference of *inability* to pay the obligations, but there is no suggestion that petitioner would benefit financially from such a payment, of *desirability* of payment. As a

matter of fact, the successful non-payment of obligations almost inevitably results in a financial gain.

3) Levies of execution—Forgetting the question of admissibility, and referring only to the question of substantiality, this evidence is the rankest form of hearsay. Obviously, the returns of “no goods found” were office returns, since the loan application (Ex. 7, R. 19, 732 A—732 B), as well as the First Federal Savings Account (Ex. 2-C, R. 37, 695) and the Vercoe Account (Ex. 2-N, R. 38, 703) shows that at the time of the levies, the petitioner did have property, and the testimony of Cohen (R. 28-30, 36) shows that petitioner owned stock in a corporation and drew a salary.

4) Corporate dissolution—Three co-owners of a corporation did not possess the *joint* capital to continue past early 1941, but one of them, singly, could continue the operation, and show a profit, as respondent contends, of \$16,140.00 in 1944. The only inference which can possibly be drawn from this evidence is in direct opposition to the one required by the prosecution.

5) Safety deposit box entries by petitioner total only forty five from 1941 through 1945, as contrasted with thirty five entries in 1946 and 1947 (R. 130-131; Ex. 12 A and 13, R. 67-68, 736-742). But since petitioner is not credited with cash until December 31, 1945, the jury must infer that he visited his box prior to that date merely to examine worthless papers.

6) The very final inference which the prosecution asked the jury to draw is inconsistent and contradictory. The petitioner is supposed to have been completely honest for almost thirty years, and then he unexplainedly concealed \$50,000.00 in 1944 to 1946, and was stupid enough to conceal \$37,553.86 in the return which he filed on January 15, 1948, almost four months after he knew that he was under investigation.

It is no wonder, in view of the insufficiency of such evidence, that the respondent insists so strenuously that the loan application (Ex. 7, R. 19, 732) constitutes an admission which fixes exactly petitioner's net worth on October 20, 1939. However, respondent forgets one tremendously important fact, the signature on the loan application is that of David Friedberg *alone*, and, as respondent points out on page 33 of its Brief, *petitioner and his wife always considered the cash savings to be the wife's money* (R. 264-275, 329-334, 418-419, 430, 463-465, 469-473). Respondent would establish the starting point net worth of petitioner *alone*, and then compute his increased net worth by adding to it assets which belonged to the wife and to the son (Ex. 2, R. 38, 691, assets stipulated to by defense). This is neither good mathematics, nor good law.

But even apart from this consideration, the financial statement annexed to the loan application, can by no means be considered as an admission of the *maximum* assets possessed by petitioner in 1939.

The strained inference urged by respondent requires a re-examination of the use and function of admissions. Wigmore points out (Wigmore on Evidence, 3rd Ed., Vol. IV, Section 1048) that an admission has a two-fold "probative value." First, it can be used for impeachment; but this does not bear on the burden of proof issue here under discussion. Second, admissions "have such testimonial value as belongs to any testimonial assertion *under the circumstances*; and the more notably they run *counter* to the natural bias or *interest* of the party *when made*, the more credible they become; this element adding to their probative value, but not being essential to their admissibility." (Emphasis added.) The "circumstances" surrounding the loan application, "when made," were not those which created an "interest" in petitioner in 1939 to list the *maximum* assets possessed by *himself, his wife,*

and *his children*. He sought a loan of \$7,600.00, secured by a first mortgage lien on real estate, which the National Life Insurance Co. stated on the application as having an appraised value of \$9,650.85 (Ex. 7, R. 19, 732 A). There was no reason, or obligation, to list every cent he had. The lending institution and the F.H.A. merely had to be satisfied that the property had the proper valuation, and that he was a good risk. As Wigmore points out (Wigmore on Evidence, *supra*, Sec. 1049), even a full-fledged admission "*is not in any sense final or conclusive*," and prosecution exhibits 2-C (R. 37, 695) and 2-N (R. 38, 703) prove that the loan application was not conclusive. The trial court should not have permitted the jury to speculate on the probative effect of the loan application.

The real weakness of this evidence is most strikingly apparent in its effect upon the jury. The jury found the petitioner not-guilty in 1944, but guilty in 1945, 1946, and 1947. Respondent tries to explain this impossible result (Br. 50 *et seq.*) on the grounds that proof of *intent* was weakest for 1944. But that argument ignores the fact that proof of the *starting point* net worth was the same for *all* years. Petitioner's visible net worth apparently increased \$13,404.71 in 1944 (Pet. Br. 5). Since the assets on the net worth schedule had been stipulated, this substantial increase had to arise from savings, or from current income. In a progressing mathematical computation of increasing net worth, this large sum had to come from some source, and a verdict of not-guilty could only mean that the starting point had not been established to the satisfaction of the jury. Such a finding of insufficiency would have to apply to the other years also, no matter how strong the evidence for those years was on opportunity or motive. This is no argument on inconsistency of verdicts, but is a problem peculiar to a net worth increase case. It is the reasoning employed in granting motions for acquittal,

after such a split verdict, in *United States v. George L. Allen* (S. D., Calif., October 20, 1950), Prentiss Hall, par. 72, 784; 1950 C. C. H. 9494.

**THE OPINION OF A NON-EXPERT ON THE
DECISIVE FACTUAL ISSUE SHOULD
HAVE BEEN EXCLUDED**

There is absolutely no comparison between the testimony of agent Clifford in *United States v. Johnson, supra*, and the testimony of agent Clager in the instant case. At page 126 of the Court of Appeals opinion in the former case [123 F. (2d) 111], the majority stated flatly concerning Clifford:

“He qualified as an expert accountant.”

In the instant case, the prosecution made no attempt to qualify Clager as an expert at anything, and defense counsel ascertained that he certainly was not an expert accountant. Respondent (Br. 40) would attempt to make Clager into an expert by claiming that petitioner's counsel conceded such status in their brief before the Court of Appeals. A reference to that appellate brief discloses that counsel there merely used the word “Granted” in the sense of “assuming *arguendo*.” This is a far cry from the qualification of an expert.

The distinction between the testimony of the two agents is just as absolute in its contents. Clifford “made an analysis and computation based on Governments exhibits (naming 400 exhibits) and other evidence *in the record* to determine the amount of net cash income reported by the defendant” (emphasis added) [123 F. (2d) 111, 126]. Clager “did not include currency at the end of the year 1941 because *my investigation* disclosed no evidence which would permit me” (emphasis added) (R. 139). Clifford's testimony consisted of computations of income reported,

of expenditures, of gross income, and of tax still due, all based "on these exhibits and the evidence in the record" [123 F. (2d) 111, 126-127]. Clager's testimony consisted of his opinion on the "decisive issue of fact" which existed for the jury's determination, the issue of whether petitioner possessed cash, and this opinion was based on his "investigation," not on the record alone.

Clager was not an expert; his testimony was not that which is permitted as expert testimony. The motion of defence counsel to exclude the objectionable portions should have been granted.

THE SUA SPONTE INSTRUCTION TO "COMPROMISE" REQUIRES REVERSAL

Respondent evidently feels that if a court gives enough correct instructions to a jury, it becomes permissible to inject an improper instruction into the charge, "for whether a jury is properly instructed cannot be determined from consideration of a single paragraph, sentence, phrase or word" (Br. 47-48). It is perfectly true that an entire charge must be examined, to determine whether the basic issues have been treated unequivocally, or to determine whether the charge is misleading. But one does not have to read ten pages of record to ascertain if the court told the jury to "compromise" its verdict.

Beginning at page 50 of its Brief, respondent sets out a lengthy analysis of the evidence, stressing the fact that the understatement charged in 1947 (\$37,553.86), in 1946 (\$18,091.41), and in 1945 (\$20,156.82), "were considerably greater than the understatement charged for 1944 (\$13,404.71), all for the purpose of explaining the split, compromise verdict. But this evidence all pertains *entirely* to *motive or intent*, and has not the slightest reference to the establishment of a *starting point net worth*. Since the asset

figures on the net worth schedule were stipulated, petitioner *did* enjoy an apparent increase in visible net worth, largely through bond purchases. This resulted either from cash savings, or from current income. In a progressing mathematical computation of increasing net worth, the \$13,404.71 increase had to come from some place, and a verdict of not guilty in 1944 could only mean that the starting point had not been established to the satisfaction of the jury. It is no explanation to argue that proof of intent was weaker in the 1944 period.

But the real issue is whether the Courts of Appeals of the Circuits may set forth their own varying interpretations of Rule 52 (b) of the Federal Rules of Criminal Procedure, or whether this Court will carry to fruition the purpose of the Advisory Committee that Rule 52 (b) shall be a codification of existing law. "Plain errors or defects affecting substantial rights," even though not excepted to, should be considered on appeal, particularly when the error is not contained in a charge, but merely occurs in an unfortunate *sua sponte* comment about the non recess, which comment worried its author to such an extent that he inquired about it on five occasions during argument on the motions after trial (R. 661-663), and then said, before passing sentence:

"if the Court committed any error in its instructions, an upper Court will have to determine that fact."
(R. 667.)

CONCLUSION

For the reasons stated above, the judgment of the Court of Appeals should be reversed, and the case remanded to the District Court with directions to enter judgment of acquittal.

Respectfully submitted,
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1954

No. 18

DAVID FRIEDBERG,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR THE PETITIONER

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DAVID FRIEDBERG,

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BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported in 207 Fed. (2d) 777.

JURISDICTION

The judgment of the Court of Appeals was entered on October 16, 1953, and the petition for rehearing was denied by the Court of Appeals on November 30, 1953, at which time the execution of the mandate was stayed pending filing of a Petition for Certiorari. The Petition for Certiorari was filed on December 28, 1953, and was denied on March 8, 1954. A Petition for Rehearing was filed on March 20, 1954, and was granted on June 8, 1954, on which date an order granting certiorari was entered.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254. See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.

STATUTE AND RULES INVOLVED

The petitioner was convicted for alleged violations of the provisions of Title 26, Section 145(b), (Internal Revenue Code), which reads as follows:

“(b) Failure to collect and pay over tax, or attempt to defeat or evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. [26 U. S. C. 1946 Ed., Sec. 145(b).]”

Rules 30 and 52(b) of the Federal Rules of Criminal Procedure, which read as follows, are likewise involved:

“Rule 30.

“ . . . No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.”

“Rule 52.

“(b) Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the Court.”

QUESTIONS PRESENTED

1. Did the evidence establish the petitioner's basic net worth at the start of the taxable years in question sufficiently to present an issue for jury determination?

2. Did the District Court commit reversible error in permitting the revenue agent (Clager) to state his conclusions why no cash on hand was included in his computation of petitioner's net worth, prior to 1945?

3. Did the District Court commit reversible error in its supplemental instruction to the jury to compromise and adjust their differences?

STATEMENT OF CASE

Petitioner was indicted in the Southern District of Ohio for violation of Section 145(b) of the Internal Revenue Act in the years 1944, 1945, 1946 and 1947. The jury found petitioner not guilty on Count I (1944), and guilty on Count II (1945), III (1946) and IV (1947). The District Court imposed concurrent sentences of imprisonment for eighteen months on each of the three counts and a fine of \$10,000 on Count II (R. 669).

This is one of the very first cases prosecuted strictly on an increased net worth basis, relying solely on circumstantial evidence. No attempt was made to show specific additional unreported income from petitioner's business, or from any other source, or to show unusual expenditures. The theory of the prosecution, evidenced in the net worth statement (Ex. 2, R. 38, 691), in argument, and in briefs, is that petitioner had no currency in his or his wife's possession at the end of 1941, 1942, 1943, or 1944, so that the assets on hand in 1947 could be the result only of failure to report income in 1944, 1945, 1946, and 1947. The critical importance of the currency item is heightened by the stipulation of defense counsel (R. 38, 120) that all items on the

net worth statement were correct with the sole exception of the treatment of cash and bonds. Therefore, the principal question presented is whether the starting point evidence which excluded cash on hand, proved the petitioner's starting point net worth sufficiently to present an issue for jury determination. The issue of the sufficiency of the evidence was challenged at appropriate times by motions for acquittal (R. 226, 640, 655), which were all overruled.

David Friedberg married Frances Handler in 1915 in New York, and moved to Dayton, Ohio, about two years later (R. 371). In 1922 or 1923 they moved to Columbus, Ohio, where they have resided ever since (R. 373). In about 1918, petitioner and two others formed a tailoring partnership (R. 29), which they incorporated under the name of the Buckeye Tailoring Co., in 1922, about the time they all moved to Columbus (R. 29, 371). Since 1941 petitioner has operated The Buckeye Tailoring Co., as an individual, and it has had the same location since that date (R. 372).

Apart from some real estate trading and developing in the nineteen twenties and the thirties (R. 179 et seq.), a small inheritance (R. 37), and a brokerage account with Vercoe and Company opened in February, 1936 (Ex. 2N, R. 38, 703), petitioner's income came from The Buckeye Tailoring Company. There is no claim of specific additional unreported income, but there is solely a reliance upon the prosecution theory that the petitioner had no cash on hand until 1945.

The origin of, and sole basis for, this theory is a speculative assumption and an arbitrary allocation, made by an inexperienced (R. 136-137) agent, of currency and bonds which petitioner had in his safety deposit box in 1947. On the occasion of the second visit to petitioner by an agent, and in response merely to a general question, petitioner voluntarily took the agent, and a deputy collector, to the

Market Exchange Bank and opened for their inspection a box which was in his wife's maiden name (R. 408-412), the existence of which was unknown to the agents (R. 85, 86). The box contained bonds in the face value of \$53,625.00, and currency totalling \$19,600.00 (R. 83, 82). The bonds were charged against the petitioner's income in the years in which they were purchased (R. 211-212), and the currency was listed as income in those years corresponding to the dates found on the binders which held the currency (R. 81-82; 115-116). The only reason for allocating \$53,625.00 of bonds as income in the net worth years was the assumption that they were purchased from current earnings; the only reason for allocating \$2,000.00 as 1945 income, \$3,000.00 as 1946 income, and \$14,600.00 as 1947 income, was the assumption that the first two items represented current income in the years marked in pencil on their paper binders, and that the \$14,600.00 had to represent 1947 current income, since its paper binders bore no dates (R. 81-82; 116). The bond purchases account for practically all of the net worth increase (R. 208-209).

This arbitrary allocation of assets to income led, after three years of investigation, to an indictment (R. 1), with reported income, and claimed income and claimed understatements as follows:

	<i>Reported</i>		<i>Claimed</i>	
	Gross ¹	Net ²	Net ³	Understatement ⁴
1944	\$61,831.83	\$2,735.97	\$16,140.68	\$13,404.71
1945	37,471.65	2,012.36	22,169.18	20,156.82
1946	58,782.36	4,943.93	23,035.34	18,091.41
1947	64,623.91	7,723.05	42,276.91	37,553.86

Since the prosecution did not question the expense items deducted on petitioner's return, Item 3 represented purely

¹ From Exhibits 1(b), 1(c), 1(d) and 1(e) (R. 671 et seq.).

² *Ibid.*

³ From Record, page 204, wherein amounts vary slightly from those in indictment.

⁴ Computed difference between 3 and 2.

a claimed income in excess of that reported. During this period petitioner was operating a business with three employees (R. 46, 289). The jury acquitted on Count One (1944), and found petitioner guilty on Counts Two (1945), Three (1946), and Four (1947), a rather strange decision in an increased net worth case.

The prosecution relied solely on circumstantial evidence to prove the starting point net worth and to justify its exclusion of cash on hand (R. 648). The evidence can be summarized as follows, with comments thereon later in the argument:

1. Loan—In 1931, petitioner borrowed \$550.00 on his insurance policies (Ex. 4A; R. 15, 722).

2. Foreclosures—In 1934, foreclosure was had against Bedford Avenue property, and in 1934 against Sheldon Avenue property, both of which had formerly been owned by petitioner. In 1936, foreclosure was had against the Nelson Road property. A deficiency judgment therein was satisfied in 1939 for \$100.00 (Ex. 6A and 6B; R. 18, 726, 729).

3. Levy of Execution—In 1936, execution was levied on a \$13.76 Municipal Court judgment against petitioner, and a return of no goods was filed (Ex. 5A; R. 17, 724).

4. County Tax Returns—Between 1938 and 1946 petitioner filed no county personal property tax returns. He filed delinquent returns in 1947 for the years 1942 through 1947 (Ex. 30; fol. 1124, R. 759).

5. Income Tax Returns—The records of the Collector's Office (R. 671-688) show that, during the period 1924 through 1947, petitioner returned a taxable amount of income in eight years, returned no tax due in four years, and did not file a return in twelve years.

6. Loan Application—In 1939, petitioner filed an application for an F.H.A. loan, whereon he listed cash on hand of \$150.00 (Ex. 7; R. 19, 732).

7. Corporate dissolution—In 1941, The Buckeye Tailoring Company voluntarily dissolved under Ohio law, and petitioner purchased the assets (R. 66-67).

8. Bookkeeping—Until November 30, 1944, Mrs. Appel kept the Buckeye books, on which date she resigned (R. 38-40). Since that date, petitioner's wife has kept the books (R. 278).

9. Friedberg Loan—From March 22, 1945, Mrs. Friedberg carried miscellaneous and stock suit sales under the erroneous, or inappropriate, book entries of "Friedberg Loan" (R. 169, 284-285).

10. Opinion Evidence—During cross-examination, not in response to the question of defense counsel, and over repeated objection (R. 138-143) an inexperienced (R. 136-137) special agent was permitted to argue to the jury, under the guise of presenting sworn factual testimony, his personal arguments and conclusions why petitioner could not have had currency on hand. This pre-opening argument was repeated to the jury on re-direct examination (R. 188-190), over futile objections.

Such evidence is quite remote and speculative, to present to a jury which has the power to deprive a man of his liberty. Therefore, in order to bolster the agent's theoretical allocation of currency and bonds to current income in the net worth years, the prosecution evolved another equally arbitrary theory—that unreported income was concealed by use of the Friedberg Loan bookkeeping entries. However, as shall be pointed out later, the Friedberg Loan theory was exploded by its author, special agent Clager, who admitted that all of the amounts listed under the Friedberg Loan entries were reported and treated as taxable income (R. 169).

Thus, the prosecution was left with Exhibit 7 (R. 19, 732), which the prosecution treated as an admission. But it is difficult to understand how a 1939 statement can

prove that petitioner did not possess cash until the end of 1945. In addition, a close examination discloses that the document actually does not constitute an admission.

Instead of sustaining defense motions which contended that there was insufficient evidence to present to the jury, the District Court confused a confounded jury, after four and one half weeks of trial, and on the second day of the jury's deliberation, by telling the jury "to compromise and adjust your differences and reach a verdict, if possible" (R. 653-654). Since objection was not made to this clearly erroneous supplemental charge, the question on this point is the effect of Rule 52(b) on Rule 30, Federal Rules of Criminal Procedure.

SUMMARY OF ARGUMENT

I

A.

The verdict of Guilty on Counts 2, 3 and 4 is not supported by substantial competent evidence. Evidence of the petitioner's starting point cash position consisted of remote circumstantial evidence, from which tortured inferences of status must be drawn, with unfounded assumptions that such status continued without change for as long as fifteen years, with a further inference to be drawn from such assumption. The effect of the assumption is to shift the burden of proof to a defendant in a criminal case, and the creation of the assumption violates the rule of *Maggio v. Zeitz*, 333 U. S. 56, at 65.

B.

To establish the starting point net worth, and to prove that petitioner's assets at the starting point did not include cash on hand, the prosecution offered an F.H.A. loan application (Ex. 7, R. 19, 732), which was asserted to be an admission by petitioner of his cash position. The

so called admission was signed at a time over six years before the date when the net worth computation could possibly permit the petitioner to have any cash on hand, and still be guilty. Respondent misunderstands the nature of the loan application. It is not an admission, but merely another parcel of circumstantial evidence, from which respondent can only attempt to infer a status, assume that the status continued over six years without change, and from the assumption infer a lack of cash. As such an item of circumstantial evidence, this exhibit is as insufficient as the remainder of the evidence, is more susceptible to an inference leading to innocence than one leading to guilt, would shift the burden of proof, and is contrary to the rule in *Maggio v. Zeitz*, 333 U. S. 56, 65.

II

In an answer which was not responsive to the question, and over the objection of cross-examining defense counsel, a special agent of meagre experience, who was not qualified as an expert, argued at length to the jury on his reasons and conclusions why the petitioner did not have any cash on hand until 1945, under the guise of testifying to facts. This argument was resumed on re-direct examination, over the repeated objection of defense counsel. Such conduct is far removed from the permissible analysis of bookkeeping records by a qualified accountant, and is highly prejudicial in that it misleads the jury into accepting argument as fact, and in that it permits the prosecution to argue its case to the jury on the sole important factual issue, cash, before all the evidence has been submitted.

III

The supplemental charge to the jury "to compromise and adjust your differences, and reach a verdict, if possible," is such a plain error or defect affecting substantial

rights as may be noticed, under Rule 52(b), Federal Rules of Criminal Procedure, even though the objection required by Rule 30 was not raised.

ARGUMENT

I

A.

The Verdict Is Not Supported by Substantial Competent Evidence.

“In a net worth case, the starting point must be based upon a solid foundation. . . .” *United States v. Chapman*, 168 F. (2d) 997, 1001, (C. A. 7), c.d. 335 U. S. 853. Controversial as the net worth method is, the proposition just quoted is not disputed, and it cannot be disputed. The net worth method is an accounting method for the reconstruction of income by approximation. The prosecution establishes the net worth at the beginning of a certain period, and at the end of the period, and then it becomes obvious that the increase from the former to latter figure could not have resulted from the income which the taxpayer reported. A computed difference between two figures is found to be irreconcilable with reported income. *It is assumed that the discrepancy consists of unreported income.* Therefore, a criminal conviction which rests on an assumption must be supported by a clearly proven starting point and termination point, or the entire proceeding becomes one of summary justice.

“The principal question presented relates to the adequacy of the starting point evidence to show that increases in petitioner’s net worth during the years 1945, 1946 and 1947 could not have resulted from the investment of cash funds accumulated in earlier years.” (p. 4, Brief of Respondent in Opposition to Certiorari.) To be even more specific, the sole basic factual issue in the trial was whether

approximately \$75,000.00 in cash and bonds, which was voluntarily disclosed to the agents in 1947, represented the life savings of petitioner and his wife, as so testified by both the petitioner and his wife at the trial (R. 275, 430), or whether these items represented current, unreported, income in 1945, 1946 and 1947. Petitioner's counsel stipulated (R. 38, 120) that the net worth schedule (Ex. 2, R. 38, 691) was correct with the exception of the treatment of cash and bonds.

The arbitrary allocation of bonds and cash to current income in 1945, 1946 and 1947 was the decision of the inexperienced (R. 136-137) special agent in charge of the investigation, when he prepared (R. 115) the net worth schedule. He allocated bonds to current income in the year in which they were purchased (R. 211-212) and allocated some cash to current income in 1945 and 1946 because those dates appeared on the paper binders which held \$2,000.00 and \$3,000.00 respectively, and the rest in 1947 because the remaining \$14,600.00 had no dates on its binders (R. 81-82, 115-116).

Such an arbitrary assumption and allocation required proof, and the prosecution proceeded into the trial feeling that it had such proof in the Friedberg Loan entries on the petitioner's books. Special agent Clager, the principal witness for the prosecution, devoted a major portion of his testimony in chief (R. 95-108) to the Friedberg Loan entries, and thirteen of the twenty four prosecution witnesses (R. 69-70) were called to testify on the Friedberg Loan issue. The special agent testified that he was assigned to the case on November 21, 1947 (R. 92), just after the October 10, 1947 (R. 79) visit to the box. One of his first discoveries was that, after the bookkeeper resigned, and Mrs. Friedberg took over the bookkeeping, the income from alterations was no longer entered in the cash receipts book

(R. 96). He then noticed the appearance, also beginning in 1945, of the Friedberg Loan entries (R. 96). He spent much time, and was able to identify certain people whose surnames appeared opposite items on bank deposit tickets into the Buckeye Tailoring Co. account (R. 98-108). It was established that these items, not listed as such in the cash receipts book, actually represented income, and most of those persons so testified (R. 69-70). The prosecution was jubilant, felt that here was their proof of unreported income, and introduced meager evidence on the starting point net worth.

But the case blew up on Clager's cross-examination. He admitted that for 1945, 1946 and 1947 the petitioner reported gross income which exceeded the income reflected on his books by almost exactly that amount which the Friedberg Loan entries totalled for the respective years (R. 162-166). If the Friedberg Loan items are added to the book income, "the totals compare favorably" (R. 167). As a matter of fact, the special agent admitted that, with the Friedberg Loan items added to book income, the returns show a \$3,000.00 error in favor of the Government in 1945 (R. 163), a \$1,700.00 error in favor of the Government in 1946 (R. 164), and a \$1,300.00 error (after an acknowledged adjustment) against the Government in 1947 (R. 165). To complete the devastation of the theory that the Loan items were concealed income, the special agent admitted:

"Q. And, not only does the evidence indicate that there were income items, but of more importance and greater importance is that Mr. Friedberg included each one of those D. Friedberg loans in his income tax sheets?

A. He did that in effect by reporting what he did" (R. 169).

This admission destroyed any proof of specific items of unreported income, and left the prosecution with a simple,

but more difficult, burden of proving an unwarranted increase between a starting point which must be conclusively proven, and the termination point. The evidence which the prosecution had available to meet this unexpected burden was totally insufficient.

Actually, the prosecution did not have any personal knowledge of whether petitioner had cash on hand prior to 1945 (R. 140-143), or whether petitioner had any safety deposit boxes in addition to those which agent Clager investigated (R. 195). As a matter of fact, the prosecution's evidence concerning the starting point was entirely circumstantial as is illustrated in the following testimony of the special agent:

"Q. Did Mr. Friedberg have extensive real estate transactions prior to 1944, and particularly in the early 1920's and in the 1930's?

A. My examination of the courthouse records regarding real estate revealed that he acquired and disposed of several properties.

Q. Did you give Mr. or Mrs. Friedberg credit for any cash arising from such transactions? You either did or didn't.

A. *I was unable to determine the amount of cash which would arise*" (R. 149). (Emphasis added.)

While the necessity for enforcement of the tax laws is the reason given by most of those Courts of Appeals which give the Government carte blanche in the use of circumstantial evidence in criminal tax cases under the net worth method [cf. *United States v. Demetree*, 207 F. (2d) 892, 894 (CA 5)], this Court has only on rare occasions departed from the basic rule expounded by Justice Holmes in his dissent in *Olmstead v. United States*, 277 U. S. 438, 470: "I think it a less evil that some criminals should escape than that the Government should play an ignoble part."

The sparse evidence in this case shouts a defiance at this rule, demonstrates the ease with which a jury can convict an innocent man under the present usage of the net worth method, and distorts *United States v. Johnson*, 319 U. S. 503, beyond reason.

The viciousness of the present day net worth method is that it permits the Government, by establishing a prima facie case solely with highly circumstantial evidence, to shift the burden of proof to a defendant in a criminal case. *United States v. Demetree*, 207 F. (2d) 892, 894 (CA 5); *United States v. Caserta*, 199 F. (2d) 905, 907 (CA 3).

This shifting of the burden of proof is the reason petitioner asks this Court to examine the record herein, on the basis that "we have never hesitated to examine a record to determine whether there was any *competent* and *substantial* evidence fairly tending to support the verdict." *Mortensen v. United States*, 322 U. S. 369, 374 (emphasis added). Far from being "competent and substantial," petitioner feels that the evidence here clearly violates the rule laid down in *Brinegar v. United States*, 338 U. S. 172, 174, that:

"Guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property."

The significant feature of the application of these principles to the trial of net worth cases is that the Court of Appeals have but little difficulty when the proof is partly direct and partly circumstantial, but that these principles are widely and divergently interpreted when, as here, the proof is entirely circumstantial. 38 *Georgetown Law Jour-*

nal, 262. The "competent and substantial" (*Mortensen v. United States, supra*) evidence rule is difficult to apply in net worth circumstantial evidence cases, because of the limited function of circumstantial evidence, as set forth in *Tot v. United States*, 319 U. S. 468, 467:

"The jury is permitted to infer from one fact the existence of another essential to guilt. In many circumstances courts hold that proof of the first fact establishes a basis for inference of the existence of the second."

In circumstantial evidence net worth cases, the prosecution of necessity must enlarge the function of the circumstantial evidence beyond the rule of the *Tot* case.

The evidence in the instant case is a perfect example of this last statement. Respondent summarized the evidence on page 4 of its Brief in Opposition, and characterized the evidence on page 12 of that Brief as the income tax filing history, the borrowings, the mortgage foreclosures, and admissions. Petitioner will here follow that summary, which also appears in the Statement of Facts herein.

1. Loan—(Ex. 4A, R. 15, 722). The fact is proved that petitioner borrowed \$550.00 in 1931. From this fact the jury is asked to infer a financial condition of petitioner which excluded his possession of any readily convertible assets, and then the jury is asked to assume that this status persisted until December 31, 1945. So, from that assumption, the jury may infer the fact (sic) that petitioner had no cash on hand during these fifteen years, from which last inferred fact follows an assumption that the net worth increase in the mid 1940's resulted from unreported income. These inferences and assumptions are a far cry from the rule that possessions of the fruits of a crime two weeks after its commission raises an inference of guilt. *Wilson v. United States*, 162 U. S. 613.

2. Foreclosures.

A. The fact was proven that in 1934 (Ex. 28, R. 191, 743) foreclosure was had against the Bedford Avenue property, which petitioner had sold in July 10, 1928, with the purchaser assuming the mortgage (R. 185). Petitioner, because of the assumption of mortgage, was a party to the suit, but paid nothing, and no attempt was made to collect from petitioner (R. 183-185, 440), and petitioner had no interest in the property (R. 440). The fact was also proved that in 1934 (Ex. 29, R. 191, 744) foreclosure was also had against the Sheldon Avenue property, which petitioner had sold on April 16, 1929 (R. 182), and had to reacquire to attempt to protect his savings (R. 444). Here again was an assumption of mortgage by the purchaser (R. 182), but here again was no collection, actual or attempted, against petitioner (R. 438), or no interest in the property after foreclosure, or throwing of good money after bad (R. 441). From these facts, the jury must infer that it would have been financially beneficial to petitioner to pay off the mortgages in the declining real estate market (R. 441) of the 1930's, but that petitioner could not pay off the mortgages because of a financial condition (in 1934) which rendered him unable to do so. The jury must then assume that this condition persisted for eleven years, so that it can then infer the final fact that petitioner had no cash until December 31, 1945.

B. Nelson Road—The proven fact is that petitioner acquired this property in trade on March 15, 1929, assuming a \$9,000.00 mortgage thereon (R. 181), and enjoyed the use of it until the foreclosure in 1936 (Ex. 6A, R. 18, 726; R. 490). Petitioner was dissatisfied with the property (R. 490 et seq.), and received a full satisfaction of his obligation for a nuisance payment of only \$100.00 (Ex. 6A, R. 726). From this fact the jury is again asked to make the same lengthy string of inferences and assumptions as in the

other two foreclosures, despite the fact that the prosecutor tried to prejudice the jury by suggesting a contradictory, but more logical inference, to the effect that petitioner preferred keeping his assets intact to paying his creditors (R. 485). There is no attempt to show that retention of the property would benefit petitioner financially.

3. Levy of Execution—The fact is proven that in 1936 petitioner suffered a judgment for \$13.76 in the Columbus Municipal Court, and the bailiff made returns of execution levied of no goods found. The bailiff was not called to testify, so the record is silent on whether or not this was a mere office return, with no attempt by the bailiff to enforce the writ. Since other proof offered by the prosecution (Ex. 2C, R. 37, 693; Ex. 2N, R. 38, 703; Ex. 7, R. 19, 732) conclusively shows that petitioner did possess property during this period, and drew a salary regularly, the jury would have no choice but to infer that no search was made by the bailiff, and that defense testimony was truthful in that the debt was ignored because no attempt was made to collect this small sum (R. 360).

4. County Tax Returns—The fact is that petitioner did not file county tax returns on personal property from 1938, and in October of 1947 filed delinquent returns (Ex. 30, fol. 1124, R. 759). The inference which respondent would draw from this fact, namely, that petitioner owned no such property, is precluded by proof which the prosecution offered (Ex. 2N, R. 38, 703; and Ex. 30, the very exhibit relied on), show conclusively that he did possess property, and that he simply failed to file returns.

5. Income Tax Returns—Petitioner's filing records (Ex. 1F, fol. 13, R. 684) was placed in evidence, so that the jury could infer from it that petitioner could not have earned sufficient income to permit him to accumulate any cash between 1924 and 1945. Of course, petitioner's pre-1943 returns had long since been destroyed according to the

custom with individual returns, and the Internal Revenue Records merely indicated a tax paid, a non-taxable return, or no return (Ex. 1F, fol. 13, R. 684). The prosecution attempted to reconstruct petitioner's income (R. 513 et seq.), but a Revenue Office prosecution witness admitted (fol. 22-23) that it was impossible to figure backwards in this fashion, and that the amount of tax assessed or paid would not reflect the amount of income received or paid.

Respondent urges the astounding inference that from 1916 to 1943 petitioner was completely truthful and free from error in his reporting of income, but that he underwent a miraculous transformation on March 15, 1944, which caused him to conceal and fail to report \$13,404.71 on that date, \$20,156.82 a year later, \$18,091.41 a year after that, and the amazing sum of \$37,553.86 on March 15, 1948, despite the fact that he had known since September 25, 1947, that he was being investigated for income tax deficiencies (R. 407), and despite the fact that on October 10, 1947 the agents told him that they would take a "slice" of the contents of his safety deposit box (R. 415).

6. Loan Application—This exhibit is discussed at length in part I B below.

7. Corporate Dissolution—In 1941 the Buckeye Corporation dissolved voluntarily under the Ohio statutes (R. 66-67) because the three men who comprised the corporation did not jointly possess the funds required to finance the particular type of business which was conducted (R. 30). Petitioner singly purchased the assets and carried on the business quite successfully, converting it into a different type of tailoring operation (R. 44-46), with resultant economies. The only inference which can be drawn here is that the three men who each held one third of the corporate stock could not provide the financing which the corporation required (R. 428-431, 449), but that one of them alone was able to continue the operation of the business.

8. Bookkeeping--The jury is asked to infer that petitioner was completely exact in his reporting of income up to 1944, but that his wife, who took over the bookkeeping in late 1944, after Mrs. Appel married and resigned (R. 38-40, 278), was dishonest, and caused the understatement. Of course, her work could have no effect whatsoever on the starting point cash position, and the only fault found with her work was in the Friedberg Loan entries, which were admitted to be a mere formal error, of no effect on reported income (R. 169).

9. Friedberg Loan Entries--Petitioner has already pointed out that the sole fault here was one of accounting technique. The only way to arrive at the gross incomes reported for tax purposes in 1945, 1946 and 1947 is to add the Friedberg Loan totals to the cash receipts book totals for those years. Special agent Clager admitted that the sums carried under the Friedberg Loan entries had actually been reported as income (R. 169).

10. Opinion Evidence--This is the only testimony which dealt directly with the issue of the starting point cash position. No attempt was made to qualify special agent Clager as an expert, and he was not an expert accountant (R. 92-93, 136-137). He could scarcely be called upon to interpret books and records, but, shockingly, over strenuous objection, he twice offered his personal opinion why petitioner had no cash on hand prior to December 31, 1945, the sole important factual issue which the jury had to decide. In point II hereof petitioner will show in detail why such opinion should never have been offered as if it were an evidentiary fact.

Petitioner has outlined the evidence upon which respondent relies, not to have it weighed, but to demonstrate how the starting point evidence fails to meet the test of "long experience in the common-law tradition," as in *Brinegar v. United States*, supra, or the "competent and substantial"

test of *Mortensen v. United States*, supra. The dissimilarity between the instant case and *United States v. Johnson*, 319 U. S. 503, 516-518, is striking in three respects. On the key issue of "source of unreported income," a "voluminous body of larid and tedious testimony . . . amply justified the jury in finding" that Johnson was proprietor, not patron, while here the special agent admitted that the Friedberg Loan items had been reported as income. Proof of excessive expenditures "is enough to sustain the judgment against Johnson," while expenditures were not an issue in this case. "Meticulous proof" showed that Johnson had a source of concealed income, that his expenditures were excessive, and that the gambling houses made profits, the amounts being unknown. An inference was permitted that Johnson concealed income, without proof of the exact amount concealed. Here is no concealed source of income, no claim of excessive expenditures, but merely inferences on assumptions which are based on inferences. This evidence is not the inferring of a second fact from the proof of the first fact, as in *Tot v. United States*, supra. Here a fact leads, in a loose, vague, way to an inference. The inference must be assumed to continue to exist in unchanging form, for as long as fifteen years. From that assumption is drawn the final inference, that of no cash on hand, and that the increase in net worth resulted from concealed income. Not only is the original proven fact susceptible to many and conflicting inferences, but the element of remoteness renders the inference wholly unreliable.

This is the very presumption which, as Wigmore points out (*Wigmore On Evidence*, 3rd Ed., Vol. II, Sec. 437), weakens as the time interval lengthens. As the assumption is extended over a long period of time Wigmore illustrates, either the proponent of the rule must offer additional proof to justify the continuation of the assumption, or the opponent must assume the burden of proof. Since the first

alternative is lacking here, petitioner finds himself, in a criminal trial, forced to assume the burden of proof. This case presents a perfect opportunity for this Court to re-state the rule it laid down in *Maggio v. Zeitz*, 333 U. S. 56, 65:

“Language can, of course, be gleaned from judicial pronouncements and texts that conditions once existing may be presumed to continue until they are shown to have changed. But such generalizations, useful enough, perhaps, in solving some problem of a particular case, are not rules of law to be applied to all cases, with or without reason.”

Petitioner asks this Court to analyze this evidence under the rule of *Lustig v. United States*, 338 U. S. 74, 77:

“But the question before us is not foreclosed by the respect to be accorded to a ruling on an issue of fact by the trial court until analysis discloses that the ruling was merely on an issue of fact and that no issue of law was entwined in the ruling.”

An issue of law is most grievously entwined in this evidence. The legal issue is whether the Government can sustain net worth convictions which are based on the vaguest of inferences drawn solely from assumptions which rest on remote circumstantial evidence. The problem is highlighted in an opinion by the most conviction-minded of the Court of Appeals in *Rollinger v. United States*, 208 F. (2d) 109, 113 (CA 8):

“It remains to consider the contention urged by defendant that the court should have granted his motion for acquittal, because the evidence was *as consistent with his innocence as with his guilt*. That was a question of fact to be determined by the jury on consideration of all the evidence and circumstances in the case.” (Emphasis added.)

In other words, if any evidence of guilt can be drawn from circumstantial evidence, no matter how many diver-

gent inferences may be drawn therefrom, the jury has free rein, and the *defendant must assume the burden of proving himself innocent at his peril*. This harsh and unnatural rule is carried to its fruition in *Smith v. United States*, 210 F. (2d) 496, 500 (CA 1) (No. 52 on the dockets of this Court), wherein it was said that the failure of the defendant to assume the burden of proving his innocence may be considered by the jury in reaching its verdict. In support of this strange proposition are cited *Schuermann v. United States*, 174 F. (2d) 397 (CA 8); *Jelaza v. United States*, 179 F. (2d) 202 (CA 4); and *Remmer v. United States*, 205 F. (2d) 277 (CA 9), reversed on other grounds in 347 U. S. 227. But 18 U. S. C., Section 3481, and *Bruno v. United States*, 308 U. S. 287, are conspicuous by their absence from this opinion.

On the other hand, decrying this "shifting of the burden of proof," this undue zeal to facilitate the collection of taxes for the revenue agents, are the Courts for the Third, [*United States v. Caserta*, 199 F. (2d) 905], Fifth [*Ford v. United States*, 210 F. (2d) 313], Sixth [*Dawes v. United States*, 177 F. (2d) 255, the question not even being discussed in the one page memorandum opinion in the instant case], Seventh [*United States v. Fenwick*, 177 F. (2d) 488], and Tenth [*Morgan v. United States*, 159 F. (2d) 85] Circuits. In substance, these Courts follow the ruling in *Bryan v. United States*, 175 F. (2d) 223, 227 (CA 5):

"The evidence, being circumstantial, must exclude every reasonable hypothesis other than the guilt of the defendant."

The Court for the Ninth Circuit would grant a motion for acquittal where, as a matter of law, reasonable minds agree that a reasonable hypothesis other than of guilt could be drawn from the evidence. *Remmer v. United States*, 205 F. (2d) 277, 288, reversed on other grounds in 347 U. S. 227.

Such a rule, as is lamented in some quarters, does place the burden on the Government, but that is precisely where American jurisprudence locates the burden in criminal cases. A reviewing court may not shirk its duties in reviewing circumstantial evidence, just to facilitate tax collection. It must be pointed out that the six courts which base their rule on the constitution and on "long experience in the common-law tradition" (*Brinegar v. United States*, supra) have no difficulty in sustaining convictions where the investigating agents have produced "competent, substantial" evidence. See *Demetree v. United States*, 207 F. (2d) 892 (CA 5); *Brodella v. United States*, 184 F. (2d) 823 (CA 6); *United States v. Yeoman-Henderson*, 193 F. (2d) 867 (CA 7). The situation appears quite apt for a quotation which is found in *On Lee v. United States*, 343 U. S. 759, 761:

"There is a great deal of laziness in it. It is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence."

See also recent case of *United States v. Riganto*, 121 Fed. Supp. 158 (DC-Va.).

B.

Exhibit 7 Is Not an Admission, Susceptible to Only One Inference, But Is Merely an Item of Circumstantial Evidence from Which an Inference Must Be Drawn Only in Accord with Long Established Rules of Criminal Procedure.

The only exhibit offered on the starting point cash position, which even mentions dollars and cent items, is an F.H.A. Loan Application (Ex. 7, R. 19, 732). On October 20, 1939, petitioner applied for an F.H.A. loan of \$7,600.00 to the National Life Insurance Company, and supplied a financial statement, to justify the granting of the loan. The critical item, in the view of the respondent, is the first line of the statement, where the printed form reads

"Bank accounts." Someone inserted, with a typewriter, after these words, the additional words "on hand," and the sum of \$150.00 in figures was inserted. Respondent treats this exhibit as an admission of only \$150.00 cash on hand on October 20, 1939.

An examination of the cases which rely on admissions to establish the starting point net worth shows this exhibit to bear no resemblance at all to the proof offered in those cases. In *United States v. Hornstein*, 176 F. (2d) 217, the Seventh Circuit affirmed a conviction in which the net worth computation relied upon the figures used by defendant in his tax returns for cost of goods sold. In *Barcott v. United States*, 169 F. (2d) 929, the Ninth Circuit affirmed a conviction wherein, after the agents had accumulated damaging evidence, the defendant made repeated offers to bribe the agent. In *United States v. Chapman*, 168 F. (2d) 997, the Seventh Circuit affirmed because of a corroborated confession. In *Brodella v. United States*, 184 F. (2d) 823 (CA 6), the defendant made a claim to the agent of having received \$140,000.00 from an estate, but on investigation thereof admitted it was an error and should be deleted, and then later claimed that the amount of \$60,000.00 should be included. It was clearly established that the books of defendant failed to reflect large liquor purchases. In *Garipey v. United States*, 189 F. (2d) 459 (CA 6), it was clearly established that when the defendant began his medical practice he was heavily in debt. *Bell v. United States*, 185 F. (2d) 302 (CA 4), is based on admissions of the taxpayer to the investigating agents. This last type of admission is the one most commonly found. Equally strong would be a voluntary petition in bankruptcy, or a graduation from school and acceptance of one's first employment.

The significant feature of these admissions is that they all are admissions of a *maximum* sum possessed on a given date, that the taxpayer owned *no other assets* on that date.

Either the circumstances surrounding the act, or the reason behind the request for the confession, required those taxpayers to list every asset they possessed.

Here the situation is reversed. The prime security for the loan applied for in Exhibit 7 is a first mortgage on real estate located at 208 South Stanwood Road (R. 732), and the financial statement was a mere formality. Whether petitioner had \$9,200.00 or \$92,000.00 is immaterial to the F.H.A., so long as the property at 208 South Stanwood Road appraised properly.

In addition, the jury is precluded from inferring that the financial statement listed every item of petitioner's assets, because government exhibit 2N (R. 33, 703) proves that petitioner then owned securities through Vercoe and Company, while Item IA(3)(b) on the financial statement (R. 732B) fails to list any securities. Also, the insertion of the typewritten words "on hand" after the printed words "Bank Accounts" renders the precise significance of the \$150.00 figure uncertain.

All of these facts render most probable that inference from this exhibit which was actually testified to by petitioner (R. 478), that he merely listed sufficient assets to justify the granting of the loan.

Respondent confuses the function of this exhibit. It probably is admissible in evidence as an item of circumstantial evidence which goes generally to the issue of cash on hand. *United States v. Potson*, 171 F. (2d) 495 (CA 7). The exhibit therefore, is not an admission from which the jury is required to draw only one inference. To the contrary, the value of this exhibit as an item of evidence is limited to that inference which a jury could reasonably draw therefrom, taking into account that the loan is to be secured by a first mortgage, that the cash item is listed in a confusing fashion, that the statement clearly did not include all the assets. And if, *arguendo*, the exhibit might support an

inference of low cash position, may the jury assume that such status continued unchanged from October 20, 1939, to December 31, 1945? The record is singularly lacking in cash position evidence for that period of over six years. A reviewing court must conclude that the Loan Application is merely a portion of the general starting point cash position circumstantial evidence, and is just as insufficient and remote as the rest of the evidence.

II

THE OPINION OF SPECIAL AGENT CLAGER AS TO WHY PETITIONER HAD NO CASH ON HAND WAS CLEARLY INADMISSIBLE, BECAUSE HE WAS NOT QUALIFIED AS AN EXPERT, AND BECAUSE HE DID NOT ANALYZE BOOKS, BUT ARGUED FROM THE ENTIRE SET OF CIRCUMSTANTIAL EVIDENCE.

Special Agent Clager was asked on cross-examination to state "yes" or "no" to whether his net worth schedule (Ex. 2, R. 38, 691) credited cash to the petitioner in 1941 (R. 138). Clager would not give the simple answer requested, but sparred for several pages of record, and finally, over strenuous objection, replied:

"I did not include currency at the end of the year 1941, because my *investigation* disclosed no evidence which would permit me to put such a figure of currency in my schedule" (R. 139). (Emphasis added.)

The Court persisted in its error, and over the renewed objection of defense counsel, permitted Clager to testify, as follows:

"Based on the following evidence I did not include currency in my financial statement. . . ." (Narrative of the circumstantial events which transpired in the 1930's.)

“And so, for those reasons, I could see no reason why I should give consideration, or rather, include in this statement which I have prepared an amount of currency which he states he would have” (R. 188-190).

It should be noted that this personal opinion is the only cash position evidence offered by the prosecution from the signing of the Loan Application on October 20, 1939, until cash was credited at the end of 1945.

The prosecution had made no effort to qualify Clager as an expert on anything (R. 92). Defense counsel ascertained that Clager was certainly not an expert accountant. He graduated from college in 1940 (R. 137), and military service evidently intervened, for he did not join the Bureau of Internal Revenue until February 4, 1946, about one and one half years before he began the investigation of this petitioner (R. 137). He was not a certified public accountant, even in 1951 (R. 137). Therefore, it is highly doubtful whether Clager could be permitted even to analyze books and records for the jury. But Clager went far beyond such testimony.

He offered, as if it were an evidentiary fact, his personal opinion that petitioner did not have any cash until December 31, 1945. This is not an agent testifying to his computations of income and expenditures, based on documentary evidence, as in *United States v. Johnson*, 319 U. S. 503, 519, or *Stevens v. United States*, 206 F. (2d) 64 (CA 6). In the instant case, the sole important unstipulated factual issue for the jury to determine is whether the collection of circumstantial evidence, inference and assumption proves beyond a reasonable doubt that petitioner lacked cash on hand until December 31, 1945. Clager brashly offered his opinion that there was no cash, and urged the jury to accept his personal opinion as if it were an evidentiary fact.

Not only is the admission of such testimony shocking from the standpoint of the rules of evidence, but it is even worse from the point of view of trial procedure. It would be perfectly proper for the Government counsel, in fact his duty, to argue the evidence to the jury, under proper instructions, after all of the evidence is submitted. But here the chief government witness, before the defense is heard from, gives his opinion as if it were a fact, and argues that fact to the jury. Even the attempt of defense counsel to move for a mis-trial was of no avail (R. 139). The need for the prosecution to fill the evidential gap between October 20, 1939 (Ex. 7) and December 31, 1945, serious as it is, is no excuse for such outrageous trial procedure. The opinion testimony of Clager should clearly have been ruled out, and the unresponsive answer of deputy collector Nerny (R. 205), that he concurred in Clager's opinion, is equally improper, and equally insufficient to fill the evidential gap from 1939 to 1945.

This "whole case" turned on the jury's determination of cash position at the starting point. This opinion testimony, offered by non-experts, clearly violates the rule of *United States v. Spaulding*, 293 U. S. 498, 506:

"Moreover, that question is not to be resolved by opinion evidence. It was the ultimate issue to be decided by the jury upon all the evidence in obedience to the judge's instructions as to the meaning of the crucial phase and other questions of law. The experts ought not to have been asked or allowed to state their *conclusions on the whole case.*" (Emphasis added.)

III

THE ERROR IN THE SUPPLEMENTAL CHARGE MAY BE CONSIDERED ON APPEAL ALTHOUGH NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT.

The supplemental instruction to the jury raises the question of the relationship between Rule 30 and Rule 52(b) of the Federal Rules of Criminal Procedure, a question which has not been decided by this Court.

After four weeks of trial, and after the jury had deliberated on Thursday and Friday, January 10 and 11, 1952, the trial court called the jury in for the noon recess. Without request from either side, the Court said (R. 654):

"The Court will stand in recess until one-thirty. The Court may say to the jury at this time that I want you to make an honest and sincere effort to reach an agreement as to the merits of this case. I do not want you to shirk your duty. I want you to be fair to the Government, The United States, and the defendant. Nevertheless, this case has taken many days to try, and I hope you will make a sincere effort to *compromise and adjust your differences* and reach a verdict, if possible." (Emphasis ours.)

The jury apparently took the suggestion from the court, and within an hour and forty-five minutes returned with a compromise verdict of not guilty for 1944, and guilty for 1945, 1946 and 1947.

The issue presented is the effect of Rule 30 of the Federal Rules of Criminal Procedure, when Rule 52(b) also is applicable. Specifically, where a supplemental, rather than a regular, instruction is given to the jury, need an exception be taken, or does Rule 52(b) serve in the place of a formal exception? To state the question practically, should petitioner be denied a new trial because his trial counsel failed to object to this off-the-cuff charge, and because trial

counsel, in arguing a motion for new trial, first claimed this obvious error, and then waived it (R. 662, 663).

The District Judge apparently recognized the error, for during argument on the motion for acquittal or a new trial, he inquired of defense counsel at least five times (R. 661-663) whether error was claimed.

Rule 52(b) has an interesting history. While the rule had always been, normally, that exception must be taken to the charge if error is to be prosecuted thereon (*Johnson v. United States*, 318 U. S. 189, 200), there had long been exceptions to that rule. *United States v. Atkinson*, 297 U. S. 157; *Clyatt v. United States*, 197 U. S. 207, 221, 222. In *Screws v. United States*, 325 U. S. 91, 107, this Court added an additional exception to the rule, viz: that the charge does not submit to the jury one of the essential elements of the offense charged. In *Bollenbach v. United States*, 326 U. S. 607, the defense counsel did not except to one portion of the supplemental charge, and merely excepted to another portion of the supplemental charge, without stating his grounds with particularity. This Court reversed, holding that the supplemental charge was prejudicial, in permitting a conviction to be based on a presumption of just a few day's duration, which "offends reason."

Two months later the Federal Rules of Criminal Procedure became effective, containing both Rule 30 and Rule 52(b). The Notes of the Advisory Committee state that Rule 52(b) is a codification of existing law.

Quite rapidly, however, the Courts of the various circuits struck out on their own, and did not follow the "existing law," which was codified as "plain errors or defects affecting substantial rights." In *Cave v. United States*, 159 F. (2d) 464, 469, the Eighth Circuit set up the test of "basic and highly prejudicial." This same Court had, shortly before, set up the requirement that the error result in a "miscarriage of justice." *Lotto v. United States*, 157 F. (2d) 623, 630. In *United States v. Sherman*, 171 F. (2d)

619, 624, the Court for the Second Circuit admitted that the charge might have required reversal, but refused to notice such assigned error because no exception had been taken to the charge. In *Berenbeim v. United States*, 164 F. (2d) 679, the Court for the Tenth Circuit refused to consider whether a charge shifted the burden of proof, merely because an exception had not been taken. And the Court for the Sixth Circuit, in *Jackson v. United States*, 179 F. (2d) 842, refused to consider that the charge referred to a different, related offense, for the reason that such review was not "in the public interest."

A correct interpretation of Rule 52(b) is found in that line of cases of which *United States v. Raub*, 177 F. (2d) 312, 315 (C. A. 7), is an example:

"It appears to be generally established now that—Rule 30 notwithstanding—in a criminal case involving life or liberty of a defendant, an appellate court may notice plain and serious prejudicial error in instructions even though it was not called to the attention of the trial court."

The instant case also presents an additional problem, beyond the question of the relationship of the two rules. The objectionable words here are not part of an instruction by the Court, are not part of a charge as it is known in the Rules of Criminal Procedure. Here the Court was not giving a supplemental instruction on the meaning of reasonable doubt, as in *Allen v. United States*, 164 U. S. 492, 501, nor is it reviewing the evidence and the law to assist a tired jury, as in *United States v. Allis*, 155 U. S. 117. The Court merely called in the jury for the noon recess, told the jury to be back at 1:30, and then unprovokedly launched into its request to "compromise and adjust your differences," after stating that the case had taken many days to try (R. 654). This is no charge, as a charge is commonly known, and it is highly doubtful whether this

gratuitous and prejudicial suggestion enjoys any of the protection afforded by Rule 30, Federal Rules of Criminal Procedure.

But under either theory, these words are highly prejudicial and extremely harmful. The trial Court evidently considered them erroneous, because he inquired at least five times whether this point was being urged in support of the Motion for New Trial or Acquittal (R. 661-663). The case had begun on the basis that the Friedberg Loan entries constituted specific proof of concealment of income, and the jury never did really understand what this mass of testimony amounted to. The jury did not know quite how to evaluate a personal opinion of the chief representative of the government that petitioner was guilty. Cf. *Mora v. United States*, 190 F. (2d) 749 (C. A. 5), wherein a charge expressly withdrawing testimony from jury consideration could not cure the harm which resulted from its admission. The four and one half weeks of trial had resulted in the discharge of one juror (fol. 289), and in weariness for the remaining eleven jurors. Therefore, after deliberating (R. 653-654) Thursday afternoon and all Friday morning, it is no wonder that the jury returned at 3:15 on Friday afternoon with a compromise verdict, to avoid going into the week end. The jury acquitted for 1944, and convicted for 1945, 1946 and 1947, *in a net worth increase case wherein the starting point cash position was the only unstipulated important factual issue*. The only evidence which could explain such a finding has no relationship whatsoever to cash position. The only explanation for such a finding lies in the supplemental suggestion, which following the confusion in the minds of the jurors, and the weariness in their bodies, "cumulated" in a purely compromise verdict. Cf. *United States v. Donnelly*, 179 F. (2d) 227 (C. A. 7):

"We feel that the errors were not harmless, Rule 52, Federal Rules of Criminal Procedure; *Bollenbach v.*

United States, 326 U. S. 607; *Bihn v. United States*, 328 U. S. 633, and conclude that their *cumulative* effect was to prejudice substantial rights of the defendant, to the end that the judgment of guilty herein cannot be sustained" (emphasis added).

As this Court said in *Glasser v. United States*, 315 U. S. 60, 67:

"In all cases the constitutional safeguards are to be jealously preserved for the benefit of the accused, but especially is this true where the scales of justice may be delicately poised between guilt and innocence. Then error, which under some circumstances could not be ground for reversal, cannot be brushed aside as immaterial since there is a real chance that it might have provided the slight impetus which swung the scales toward guilt."

CONCLUSION

The conviction is based solely on strained inferences from remote circumstantial evidence, and on unwarranted assumptions which shift the burden of proof. This case, petitioner submits, should be reversed on this ground, and, because motions for acquittal were improperly overruled, final judgment should be entered in favor of petitioner.

The opinion testimony of the special agent was not the testimony of an agent, and was a pure conclusion on an ultimate fact. The supplemental suggestion of the trial Court on compromise was highly prejudicial. Reversal, petitioner submits, should follow on both these grounds, which are procedural, and would, therefore, require merely a remand.

Respectfully submitted,

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FILED

JAN 29 1954

HAROLD B. WILLEY, Clerk

No. 181

In the Supreme Court of the United States

October Term, 1953

DAVID FRISVOLD, PETITIONER

UNITED STATES OF AMERICA

vs.

JOHN EDWARD DUFFY, A WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

and

JOHN EDWARD DUFFY, A WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 510

DAVID FRIEDBERG, PETITIONER,

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 1292-1293) is reported at 207 F. 2d 777.

JURISDICTION

The judgment of the Court of Appeals was entered on October 16, 1953 (R. 1292), and a petition for rehearing was denied November 30, 1953 (R. 1301). The petition for a writ of certiorari was filed December 28, 1953. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1). See also Rules 37 (b) (2) and 45 (a), Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

1. Whether the evidence established the petitioner's net worth at the start of the taxable years in question sufficiently to present an issue for jury determination.

2. Whether the trial court committed reversible error in permitting the Special Agent to state his reasons for not including currency on hand in his computation of petitioner's net worth as of December 31, 1941.

3. Whether the trial court committed reversible error in a supplemental instruction to the jury.

STATUTE AND RULES INVOLVED

Internal Revenue Code:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years,

or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1946 ed., Sec. 145.)

Federal Rules of Criminal Procedure:

Rule 30. *Instructions.*

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

STATEMENT

On December 15, 1950, an indictment in four counts was filed against petitioner in the United States District Court for the Southern District of Ohio, charging violations of Section 145 (b) of the Internal Revenue Code. The indictment al-

leged that petitioner wilfully attempted to evade and defeat income taxes due and owing by him for the years 1944, 1945, 1946 and 1947 by filing false and fraudulent income tax returns for those years disclosing a total income tax liability of \$2,016.57, when in fact his correct income tax liability for those years was \$39,291.74, and that the attempted evasion of tax amounted to \$4,407.71 in 1944, \$7,655.21 in 1945, \$6,977.80 in 1946 and \$18,234.45 in 1947. (R. 1-3.) After a jury trial, petitioner was found guilty on Counts Two, Three and Four, and not guilty on Count One, involving the year 1944. (R. 1146-1147.) On April 8, 1952, the District Court imposed concurrent sentences of imprisonment for eighteen months on each of the three counts and a fine of \$10,000 on Count Two. (R. 1171.) The Court of Appeals affirmed. (R. 1292-1293.)

The Government's case was based upon the net worth method, and the principal question presented relates to the adequacy of the starting point evidence to show that the increases in petitioner's net worth during the years 1945, 1946 and 1947 could not have resulted from the investment of cash funds accumulated in earlier years. The Government's evidence may be summarized as follows:

In 1922, the petitioner and two other individuals formed a corporation known as the Buckeye Tailoring Company, which engaged in a tailoring business in Columbus until 1941, when it was

dissolved because it was unable to pay its bills. The general creditors received nothing and the petitioner bought the corporation's assets for \$650. Thereafter, and through the years named in the indictment, the petitioner continued the business as a sole proprietorship, operating the wholesale business under the name of Buckeye Tailoring Company and the retail business under the name of American Mill Tailors. (R. 151-156, 174-184, 216-220, 727.)

Petitioner either filed no income tax returns or non-taxable returns for the years 1926 through 1930. For the years 1931 through 1941 he filed no income tax returns except for 1937, when a non-taxable return was filed. His 1942 return reported income of \$2,400 and his 1943 return reported income of \$2,587. (R. 1200-1204.) He filed no county personal property tax returns between 1938 and 1946, but on October 3, 1947, he filed delinquent returns for the years 1942 through 1947. (R. 1278-1279.) In 1931, he borrowed sums of \$250 and \$300 against a life insurance policy. (R. 1238-1239.) In December, 1934, a foreclosure action was filed against petitioner in connection with a real estate mortgage on which he had made no payments since May, 1932. After foreclosure was ordered, petitioner moved to postpone sale under an Ohio statute, and the Court entered an order under which the sale would be postponed for six months provided petitioner would pay the costs (\$10.25), the current

taxes and the sum of \$10 per month to the plaintiff. In March, 1935, petitioner stated through his counsel in open court that he would not be able to comply with those terms, and the court overruled his motion. (R. 1261-1277.) In February, 1936, a printing company sued petitioner for \$13.76 and won a judgment. The writ of execution was returned "Nothing found to levy on". (R. 75-77, 1241.) In July, 1936, the Home Owners Loan Corporation filed foreclosure proceedings against petitioner and, when the property was sold in 1937, a deficiency judgment was entered against him. (R. 1242-1246.) On October 20, 1939, petitioner submitted to the National Life Insurance Company an application for a Federal Housing Administration loan of \$7,600, together with a financial statement signed by him in which he detailed a total net worth of \$8,700 including cash on hand of \$150. The form contained a statement that the information furnished was "in all respects, true, correct and complete". (R. 1247-1248.)

The petitioner's income tax returns for the years 1944 through 1947 were prepared by a certified public accountant without audit from data furnished him by the petitioner. (R. 29-31.) Until November 30, 1944, the books were kept by an employee, but after that date they were kept by petitioner's wife. (R. 174-176, 585-595.) Special Agent Clager testified that throughout

1944 petitioner's books reflected gross receipts from alterations, but that after 1944 no such income was shown on the books; that petitioner explained that this type of income was used to repay loans which had been made to the business; that during the years 1945 through 1947 one hundred and fifty-three entries had been made on the cash receipts book crediting "Loan, D. Friedberg"; that petitioner explained that these entries represented funds taken from his safe deposit box and loaned to the business; but that investigation disclosed many instances where sales of merchandise had been credited to the loan account. (R. 307-327, 403-429.)

On October 10, 1947, shortly after the tax investigation by the Government agents began, petitioner accompanied them to a safe deposit box rented in February, 1945, in the name of David and Francis Handler (his wife's maiden name), in which was found \$53,625 in bonds and \$19,600 in currency. The currency was in fifteen envelopes or bundles, eleven of which bore dates and four bore no dates. The currency in the envelopes bearing no dates, totalling \$5,600, was treated by the agents in their net worth computations as having been acquired in the year 1947. The remaining currency, \$14,000, was considered to have been acquired on the dates shown on the envelopes and bundles. The bank's records showed that in each instance the box had been entered

within a few days of those dates. Of the \$53,625 in bonds, \$53,425 had been purchased between 1943 and 1947. (R. 278-281, 358, 1207, 1256-1258.)

The petitioner's net worth, \$11,768.88 at the end of 1941, had increased by the end of 1943 to \$19,911.93. Between the end of 1943 and the end of 1947, it increased from \$19,911.93, to \$116,659.18, as compared with a total net income reported by petitioner during those four years of \$16,915.31. (R. 335-357, 1187-1199, 1207-1208.) Special Agent Clager testified that he had compiled the net worth figures and that he had included all of the assets and liabilities which he was able to substantiate on the basis of his investigation, but that he had not included in his figures currency on hand as of December 31, 1941, because his "investigation disclosed no evidence which would permit" him to do so. The latter statement was made upon cross-examination while defense counsel was questioning him as to his failure to credit petitioner with cash on hand at the end of 1941. Later, on redirect examination, Clager testified that his investigation disclosed that petitioner had borrowed money in 1931 at 6 per cent interest and had not repaid it until 1935; that he had refinanced his home in 1933 through the Home Owners Loan Corporation, and later had settled a deficiency judgment of \$3,000 secured by the Home Owners Loan Corporation for \$100; that several other deficiency judgments had

been obtained against petitioner during the 1930's in connection with mortgage foreclosures; that in October, 1939, petitioner had filed a financial statement with a life insurance company in connection with a loan, in which he stated that he had cash on hand of \$150; that he (Clager) had examined petitioner's sources of capital as shown by his records for the years 1941 and 1942 and found no indication of currency from undisclosed sources; and that on the basis of this investigation he could see no reason for including a substantial amount of cash on hand in his computation of petitioner's net worth as of December 31, 1941. (R. 336, 368-375, 443-446.)

The case went to the jury on the afternoon of January 10, 1952. After about four hours of deliberation, on January 10 and January 11 (R. 1144-1145), the court, in releasing the jury for lunch, stated (R. 1146):

The Court will stand in recess until one-thirty. The Court may say to the jury at this time that I want you to make an honest and sincere effort to reach an agreement as to the merits of this case. I do not want you to shirk your duty. I want you to be fair to the Government, the United States, and the defendant. Nevertheless, this case has taken many days to try, and I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict, if possible.

No objection was made to this supplemental instruction and at 3:15 p. m. the same day the jury returned its verdict. (R. 1146-1147.)

In arguing a motion for a new trial one week later, defense counsel stated (R. 1148-1149):

Your Honor was, beyond any question of a doubt, extremely fair to the defendant and to the Government. The charge, which involved a very intricate phase of law which is most difficult to grasp and understand, was entirely fair in every respect, and I am quite conscious of the fact that I am stating this into a record which is a permanent record * * *.

In his argument (R. 1148-1161), defense counsel made no reference to the supplemental instruction now complained of. The trial court commented on this omission, read the instruction aloud and asked whether defense counsel claimed error. (R. 1161-1162.) The following exchange then took place (R. 1162-1163):

The COURT. Counsel have been very fair with the Court throughout the trial of this case, and I want to commend you for that. You have been a partisan, but the Court will take judicial notice of the fact that you have a right to be a partisan. You have been eminently fair in your presentation to the Court; however, the Court was more or less disturbed as to how much importance you were attaching to the sua sponte in-

struction of the Court at the time the jury went to lunch, as to whether or not you were seriously contending that the charge which the Court has just read to you, which was given at the luncheon period with the thought in mind that it might assist the jury in compromising and adjusting their differences and reaching a verdict, whether it be guilty or not guilty, was in error, whether or not you are insisting on that as a ground of error in this case.

Mr. SILLMAN. No, we are not.

The COURT. Then you are not insisting upon this special instruction which the Court has just called to your attention?

Mr. SILLMAN. I think it is correct. I think Your Honor gave it absolutely correct. I don't think we have at any place said it was incorrect.

The COURT. After quoting the Court's charge you say, "The jury apparently took literally the Court's suggestion and brought in this split verdict within a relatively short time after returning from lunch. Furthermore, in view of the nature of the evidence, the verdict of not guilty on count 1 has the effect of exonerating the defendant as to all counts of the indictment."

Of course, that goes on. I am interested alone in this instruction which the Court gave.

Mr. SILLMAN. I think your instruction was correct.

ARGUMENT

1. Petitioner contends (Pet. 9-13) that the Government failed to sustain its burden of establishing the net worth starting point and thereby failed to exclude the possibility that petitioner's net worth increases between 1944 and 1947 resulted from investment of cash funds accumulated prior to 1944. The contention is without merit.

The starting point evidence is set forth in the statement of facts and need not be repeated. The petitioner's income tax filing history, his borrowings, the mortgage foreclosures against him, and his own admissions *ante litem motam* show almost conclusively that he could not have had any substantial amount of cash on hand prior to 1944. See *United States v. Johnson*, 319 U. S. 503; *Gariopy v. United States*, 189 F. 2d 459 (C. A. 6th); *Schuermann v. United States*, 174 F. 2d 397 (C. A. 8th), certiorari denied, 338 U. S. 831. Petitioner's testimony at the trial was plainly in conflict with his previous statements and conduct, and hence a question of fact was raised. *Barcott v. United States*, 169 F. 2d 929 (C. A. 9th); *United States v. Chapman*, 168 F. 2d 997 (C. A. 7th), certiorari denied, 335 U. S. 853; *United States v. Skidmore*, 123 F. 2d 604 (C. A. 7th), certiorari denied, 315 U. S. 800.

Petitioner selects some of the Government's starting point evidence and attempts to explain it

away (Pet. 11-12), but it is apparent that his arguments go to the weight of the evidence, matters which the jury has already decided adversely to him. For example, he implies that the probative value of his signed financial statement (submitted October 20, 1939, in connection with an F. H. A. loan) is destroyed by his testimony at the trial that he was merely listing enough assets to obtain the loan (Pet. 12), despite the fact that in signing it he certified that it was "in all respects, true, correct, and complete." (R. 1247-1248.) Again, petitioner argues (Pet. 12) that on the writ of execution issued against him in 1936 the return "Nothing found to levy on" is hearsay, when in fact the writ went into evidence without objection. (R. 75-77, 1241.)¹ If the jury had believed petitioner's testimony that he had accumulated a large amount of currency before 1944, it might have had a reasonable doubt as to his guilt, but that possibility is not the criterion by which this Court tests the validity of the verdict and the judgment. *Glasser v. United States*, 315 U. S. 60, 80; *Gorin v. United States*, 312 U. S. 19, 32; *Curley v. United States*, 160 F. 2d 229, 237 (C. A. D. C.), certiorari denied, 331 U. S. 837.

Petitioner contends (Pet. 9) that there is a sharp conflict of opinion in the Courts of Appeals

¹ In any event the writ probably would have been admissible under 28 U. S. C., Sec. 1732. See *Moran v. Pittsburgh-Des Moines Steel Co.*, 86 F. Supp. 255 (W. D. Penn.).

as to "the manner of establishing a starting point"² and cites *Demetree v. United States*, 207 F. 2d 892 (C. A. 5th). We assume that no one would disagree with the dictum in the *Demetree* case that the burden of proof should not be shifted to a defendant in a criminal case,³ but we do not agree with petitioner that there is a conflict among the Courts of Appeals as to how far the Government must go to establish a solid net worth starting point. There is and can be no particular method which must invariably be used in building a satisfactory starting point. Admissions of a defendant in the form of financial statements prepared for credit purposes may suffice (*United States v. Potson*, 171 F. 2d 495 (C. A. 7th)); or general statements made by him regarding his financial condition (*United States v. Johnson, supra*); or his business records for pre-indictment years (*United States v. Chapman, supra*); or specific conduct prior to the prosecution period, incon-

² Petitioner argues that certiorari should be granted because this Court recently granted certiorari in the case of *Remmer v. United States*, No. 304, evidently on the assumption that this Court's action was based upon Remmer's contentions as to the net worth starting point evidence.

³ Demetree's conviction was reversed because of certain improper comments by the trial court, and failure to give a requested instruction. The Court of Appeals stated, however, that it had examined the record with great care and had found the Government's net worth evidence sufficient to support the verdict.

sistent with his claim of affluence (*Barcott v. United States, supra*). In the instant case most, if not all, of these elements of proof are present.

The cases in which convictions were reversed on this point do not appear to be in conflict with those just cited or with the case at bar. In *Bryan v. United States*, 175 F. 2d 223 (C. A. 5), and *United States v. Fenwick*, 177 F. 2d 488 (C. A. 7), it was held that the Government failed to show that the starting point net worth included all of the assets owned by defendant at that time. These cases turned on their own peculiar facts and are not in conflict with those in other circuits. In more recent cases the Courts of Appeals for the Fifth and Seventh Circuits have found the Government's starting point evidence adequate. See *Pollock v. United States*, 202 F. 2d 281 (C. A. 5th), certiorari denied, 345 U. S. 993; *United States v. Yeoman-Henderson, Inc.*, 193 F. 2d 867 (C. A. 7th).

2. Petitioner contends (Pet. 14-15) that the trial court erred in permitting Special Agent Clager to state his reasons for not having included currency on hand in his computation of petitioner's net worth as of December 31, 1941. The contention has no merit.

Defense counsel opened the door to this testimony while cross-examining Clager regarding his failure to include currency. (R. 369.) Clager

freely admitted that if he had omitted any figures in the net worth statement the entire computation would be inaccurate. (R. 369.) When defense counsel sought to question him specifically as to the non-inclusion of currency in 1941, the court quite properly held that the witness could explain his answer (R. 369-371), whereupon Clager stated (R. 371):

I did not include currency at the end of the year 1941 because my investigation disclosed no evidence which would permit me to put such a figure of currency in my schedule.

On redirect examination, Clager was permitted to review briefly his reasons for not listing currency as of December 31, 1941. This testimony (R. 443-445) is set forth in the statement of facts and need not be repeated.

Petitioner argues (Pet. 15) that this testimony was in the nature of an argument to the jury, and that it was grossly improper because it permitted the witness to invade the jury's province by stating his conclusion on "the ultimate question to be determined by the jury." We submit that the testimony was proper under the general principle that a witness is permitted to explain his answers. It was defense counsel who raised the question and who insisted upon an answer, although it was very clear from Clager's testimony

on direct examination that he had included no currency in 1941. (R. 338.) Surely the witness had a right, as the court held (R. 339), to "state the factual background upon which he arrived at his net worth conclusion." It would be a most unnatural thing if an expert accountant, upon being questioned about the accuracy of his figures, did not seek to explain why he believed them to be correct. In fact, defense counsel, in questioning Deputy Collector Nerny in the same vein, got the same sort of response (R. 470): "There is no evidence of any cash at the beginning, from our standpoint", although Nerny apparently had not heard Clager's testimony (R. 8). We submit that in asking these questions on cross-examination defense counsel necessarily assumed the risk that he might elicit testimony of this nature.

As for the contention that Clager was testifying on the ultimate question to be determined by the jury, this is plainly not correct. The question of whether there was substantial cash on hand at the end of 1941, or at any other time, concerned only one element of petitioner's net worth. The ultimate issue was whether all of the evidence proved beyond a reasonable doubt that petitioner had wilfully attempted to evade and defeat his income taxes.

3. Petitioner contends that the trial court committed reversible error in giving the jury a brief

supplemental instruction after it had deliberated for about four hours. (Pet. 16-18.) The instruction and pertinent later events are set forth in the statement of facts. (R. 1146-1163.) The contention is without merit.

Ordinarily, error in the court's charge may not be assigned on appeal unless timely objection was made at the trial. Rule 30, Federal Rules of Criminal Procedure; *Nemec v. United States*, 178 F. 2d 656 (C. A. 9th), certiorari denied, 339 U. S. 985; *United States v. Warl*, 168 F. 2d 226 (C. A. 3d). The purpose of this rule is to give the trial court an opportunity to make any corrections which it thinks are proper and thus minimize the possibility of error. *United States v. Furlong*, 194 F. 2d 1 (C. A. 7th), certiorari denied, 343 U. S. 950. But an appellate court will notice such an error *sua sponte* if it is so fundamental as not to submit to the jury the essential elements of the offense charged (*Sevew* v. *United States*, 325 U. S. 91, 107), or if it appears that justice has gravely miscarried because of the giving of the charge (*United States v. Rappy*, 157 F. 2d 964 (C. A. 2d), certiorari denied, 329 U. S. 806).

In the case at bar, the supplemental instruction was entirely impartial, was expressly not objected to by defense counsel (*supra*, pp. 10-11), and contained no intimation of what the verdict

should be. No juror was asked to surrender his judgment, and the trial court was doing no more than expressing an earnest hope that they would attempt to reconcile their differences and agree upon a verdict if they could conscientiously do so. This case is plainly distinguishable from *United States v. Raub*, 177 F. 2d 312 (C. A. 7th), relied upon by petitioner, for in that case it was held (p. 316) that the instructions in question "amounted to the direction of the verdict, on the issue of falsity and fraudulence." In this case, the instruction was "entirely fair in every respect", as defense counsel himself stated (R. 1148-1149), and was consistent with instructions which have been widely approved by the courts. *Allen v. United States*, 164 U. S. 492, 501; *United States v. Allis*, 73 Fed. 165, 182-183 (C. C. E. D. Kans.), affirmed, 155 U. S. 117. See *Culp v. United States*, 131 F. 2d 93 (C. A. 8th); *Weathers v. United States*, 126 F. 2d 118 (C. A. 5th), certiorari denied, 316 U. S. 681; *United States v. McGuire*, 64 F. 2d 485 (C. A. 2d), certiorari denied, 290 U. S. 645.

The jury's verdict was not, as petitioner suggests, a compromise verdict. *Dunn v. United States*, 284 U. S. 390. In fact, the finding of not guilty on Count One and guilty on the remaining counts reflected careful consideration by

the jury of the evidence in the case.* See *United States v. Furlong, supra*.

CONCLUSION

The decision below is clearly correct, and presents no question calling for review. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1954.

* The tax evasion alleged for 1944 was the smallest of the four years. There was testimony from petitioner's former bookkeeper that during her employment, which began in 1938 and terminated November 30, 1944, all of the income from the business was entered on the books. (R. 174, 193-196.) During the years 1945, 1946 and 1947, when petitioner's wife kept the books, gross receipts were sometimes credited to "Loans, D. Friedberg", but this practice was not followed in 1944. (R. 307-327, 585-595, 1024-1027.) It was not until February, 1945, that the petitioner rented a safe deposit box in the name of David Handler. (R. 279, 358, 1256-1258.)

No. 18

Office - Supreme Court, U. S.

FILED

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HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1954

DAVID FRIEDBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

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UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES
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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 769-770) is reported at 207 F. 2d 777.

JURISDICTION

The judgment of the Court of Appeals was entered on October 16, 1953 (R. 769), and a petition for rehearing was denied November 30, 1953 (R. 774). The petition for a writ of certiorari was filed December 28, 1953, and was granted June 7,

1954. (R. 775.) The jurisdiction of this Court rests on 28 U. S. C., Section 1254(1).

QUESTIONS PRESENTED

The petitioner was convicted of wilfully attempting to evade his income taxes for the years 1945, 1946, and 1947. The Government's proof of unreported net income was based upon evidence of a source of taxable income in excess of that reported and a net worth-expenditures computation showing that increases in the petitioner's net worth plus non-deductible expenditures made by him were substantially in excess of the income reported on his tax returns. The questions presented are:

1. Whether the evidence established the petitioner's net worth at the start of the taxable years in question sufficiently to present an issue for jury determination.
2. Whether the trial court committed reversible error in permitting the Special Agent to state his reasons for not including currency on hand in his computation of petitioner's net worth as of December 31, 1941.
3. Whether the trial court committed reversible error in a supplemental instruction to the jury.

STATUTE AND RULES INVOLVED

INTERNAL REVENUE CODE OF 1939:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1946 ed., Sec. 145.)

FEDERAL RULES OF CRIMINAL PROCEDURE:

Rule 30. *Instructions.*

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests

shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 52. *Harmless Error and Plain Error.*

* * * * *

(b) *Plain Error.* Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

STATEMENT

On December 15, 1950, an indictment in four counts was filed against petitioner in the United States District Court for the Southern District of Ohio, charging that he had wilfully attempted to evade and defeat his income taxes for the years 1944, 1945, 1946 and 1947 by filing false and fraudulent tax returns, in violation of Section 145(b) of the Internal Revenue Code of 1939. The indictment alleged that he had reported an income tax

liability of \$152 for 1944, \$39 for 1945, \$470 for 1946, and \$1,355.57 for 1947, whereas his correct tax liability for those years was \$4,559.71, \$7,694.21, \$7,447.80, and \$19,590.02. (R. 1-3.) After a jury trial petitioner was found not guilty on Count One, involving the year 1944, and guilty on Counts Two, Three, and Four. (R. 654-655.) On April 8, 1952, the District Court imposed concurrent sentences of imprisonment for eighteen months on each of the three counts and a fine of \$10,000 on Count Two. (R. 668-669.) The judgment of conviction was affirmed unanimously by the United States Court of Appeals for the Sixth Circuit. (R. 769-770.)

A. Theory of the Government's Case

The indictment charged that petitioner had attempted to evade income taxes by underreporting his net taxable income. To prove that petitioner had realized net taxable income in excess of that reported, the Government introduced evidence tending to establish that there were large annual increases in petitioner's net worth in 1944, 1945, 1946 and 1947; that these increases represented current taxable income; and that the amounts of taxable income thus shown were considerably greater than the amounts reported by petitioner in his income tax returns. The amounts of net taxable income indicated by the net worth computations, as compared with the amounts disclosed by the returns, were as follows (R. 121-128; Govt. Exs. 1-B, 1-C, 1-D and 1-E, Tr. 13-14, R. 671-683; Govt.

Ex. 2, Appendix, *infra*, p. 57, R. 37-38, 691-692):

Year	Per Net Worth Computation	Per Return	Excess
1944.....	\$15,640.68	\$2,735.97	\$12,904.71
1945.....	21,669.18	2,012.36	19,656.82
1946.....	23,035.34	4,943.93	18,091.41
1947.....	42,276.91	7,223.05	35,053.86

B. Evidence to Support the Government's Case

1. *Petitioner's books and records.*—Aside from interest income reported in 1947, petitioner's income tax returns for the years in question reflected income from only one source, the Buckeye Tailoring Company, a business acquired by petitioner in 1941 and operated by him as an individual. (R. 61, 64-66; Govt. Exs. 1-B, 1-C, 1-D and 1-E, Tr. 13-14, R. 671-683.) The wholesale end of the business, involving the production of garments on order from other dealers, was operated under the name of Buckeye Tailoring Company. The retail end, involving the production of garments on direct order from consumer-customers, was operated under the name of American Mill Tailors. Petitioner's employees performed the cutting operations, but the sewing and finishing of garments was let out to independent concerns to whom the materials were shipped under the name of Jacobson Tailoring Company. One set of books, kept in the name of Buckeye Tailoring Company, ostensibly contained a record of all income from both wholesale and retail operations. (R. 41, 45-52.) Until November 30, 1944, these books were kept by an employee

named Mary Appl, but after that date they were kept by petitioner's wife. (R. 38-40, 278.)

The petitioner's business records consisted of a cash receipts book, a retail order book, wholesale invoices, and other miscellaneous records. (R. 149-150, 378.) Receipts from sales of made-to-order garments, both wholesale and retail, were entered in the cash book under the customer's name. After 1944, no detailed records were kept of receipts from alterations, repairs, cleaning and pressing, or sales of ready-to-wear stock garments. At one time petitioner told the agent that income from alterations was not recorded because it was used to pay small bills; at another time he said it was used to repay loans made to the business. At the trial petitioner and his wife testified that these miscellaneous receipts were included in the so-called Friedberg loan items which appeared in the cash book as described below. (R. 95-96, 294, 377-378.)

In auditing the cash receipts book the agent discovered that during 1945 there were thirty-four entries, involving a total of \$9,175, which were credited to an account called "Loan—D. Friedberg"; that during 1946 there were sixty-four such entries, involving \$20,750; and that during 1947 there were fifty-five such entries, totaling \$22,180. There were no such entries in 1944. Petitioner told the agent that these entries reflected funds which he had taken out of his safe deposit box and placed in the business. (R. 96-97, 575.) The investiga-

tion showed, however, that petitioner had entered his safe deposit box on only four dates corresponding to the entry of sums of money as Friedberg loans. (R. 96.) Later, when it appeared from the agent's further investigation that at least a number of these so-called loan items might really reflect income rather than petitioner's loans to his business, petitioner was unable to explain the matters disclosed by the investigation which suggested this conclusion.¹ Petitioner never told the agent that these loan entries actually represented income, but, as he stresses here (Br. 12), this was the explanation accepted and pressed by petitioner's counsel at the trial. (R. 169-170, 172-176.) Petitioner's wife testified that these entries listed as "loans" consisted of both income receipts and loans by her

¹ The agent had examined original bank deposit slips corresponding to the Friedberg loan entries and found that while the total of each such deposit agreed with an entry in the cash receipts book the deposit slips contained listings of many checks which were not specifically recorded on petitioner's books. The surnames of the persons who gave the checks appeared on the deposit slips. (R. 97-98.) When asked why there were checks deposited which were not recorded in the book, petitioner stated that he could not understand this. Later that day petitioner called the agent and stated that the checks in question were accommodation items which he had cashed as a convenience to customers. (R. 98.) In attempting to verify this, the agent was able to contact some of the individuals with unusual surnames. (R. 98-108.) Fifteen of these individuals testified that the checks in question were given by them to petitioner in payment for garments purchased from him, and one stated that his check was for alteration work. (See stipulation, R. 69-70.)

to the business, though the whole was allegedly reported as petitioner's income. (R. 280-285.)

Petitioner's income tax returns were prepared by an accountant from figures furnished by petitioner, without audit of the books and records. (R. 4-6.) In the work sheets prepared by petitioner and given to the accountant gross receipts were shown in a lump sum, and the agent testified that he was unable to determine how this sum was arrived at. (R. 170.) The gross receipts from the wholesale and retail business, as shown in petitioner's cash book, were substantially less than the gross income reported on the returns. After adding the so-called Friedberg loan items, the total amounts shown by petitioner's books and records were still somewhat less than the amounts shown on the returns. (R. 159-168.) Because of the inadequacy of the records, the agent was unable to trace the so-called loan items into the gross income figures reported on the returns. (R. 177, 166-168, 176, 185-186.)

2. *The net worth computation.*—Having concluded that petitioner's records were inadequate as a basis for determination of his income tax liability, and finding it impossible to determine the identity of all his retail customers (R. 177), the agent reconstructed his income on the basis of annual increases in net worth.² (R. 115.) Net worth was

² A Certified Public Accountant called as a witness by petitioner agreed that, from the records available, it would not be possible to make a complete audit for the years 1944, 1945, 1946 and 1947 except on a net worth basis. (R. 629.)

computed as of December 31, 1941, and as of the end of each succeeding year through 1947. (R. 122-128.) The asset items included cash in banks, securities, household furnishings, real estate and the investment in the tailoring business. (Govt. Ex. 2, *infra*, p. 57.)

At the outset of the investigation in October, 1947, the petitioner agreed to permit the Treasury agents to examine the contents of a safe deposit box rented by him and his wife in the name of David and Frances Handler. (Handler was Mrs. Friedberg's maiden name.) The box was inventoried in petitioner's presence and was found to contain \$53,625 worth of United States Government bonds and \$19,600 in currency. Of the bonds \$200 worth had been purchased in 1942, and the remaining \$53,425 had been purchased during the years 1943 through 1946. The currency was in fifteen envelopes or bundles, eleven of which (containing a total of \$14,000) bore dates, and four of which (containing \$5,600) bore no dates. Of the eleven dated envelopes, four (containing a total of \$2,000) bore 1945 dates, two (containing a total of \$3,000) bore 1946 dates, and five (containing a total of \$9,000) bore no year, but only day and month dates. (R. 79-83, 131; Govt. Ex. 13, R. 68, 740-742.)

In computing net worth the agent included the Government bonds as assets as of the end of the year in which they were purchased. (R. 213-225.) For the years 1941, 1942, 1943 and 1944 no cash on hand was included because the agent found no evidence of such cash. (R. 139-142; Govt. Ex. 2,

infra, p. 57.) As of December 31, 1945, there was included the \$2000 of currency found in petitioner's safe deposit box in 1947 in four envelopes bearing dates in November and December, 1945. As of December 31, 1946, there was included \$5,000 of the currency hoard, representing the \$2,000 apparently placed there in 1945 and an additional \$3,000 found in two envelopes bearing dates in 1946. The net worth computation as of December 31, 1947, included all of the currency found in the box on October 10, 1947 (\$19,600), minus the cost of a bond purchased by petitioner between that date and the end of the year (\$4,757.54). This adjustment was necessary in order to avoid possible duplication because the bond was included as an asset and could have been purchased from the currency hoard. (R. 116, 206-207; Govt. Ex. 2, *infra*, p. 57.)

Based on the net worth increases plus non-deductible expenditures not reflected in assets (*supra*, pp. 5-6), the income tax liability of petitioner for each of the years in question was recomputed. The amounts of tax so determined, and the amounts reported on petitioner's returns, were as follows (R. 204):

<i>Year</i>	<i>Amount Reported</i>	<i>Amount Recomputed</i>
1944	\$152.00	\$4,559.71
1945	39.00	7,694.21
1946	470.00	7,447.80
1947	1,355.57	19,590.02

3. *The net worth starting point evidence.*—Although the first prosecution year was 1944, the Government used December 31, 1941, as the starting point for its net worth computations. In order to substantiate the determination of starting point net worth and to negative the existence of any substantial cash hoard at the starting point, the Government introduced evidence tracing petitioner's financial history from 1922 to the prosecution years. It was established that petitioner and others formed a partnership known as the Buckeye Tailoring Company in 1918, and incorporated the venture in 1922, and that petitioner worked for the company continuously from 1922 to 1941, when it was dissolved because it was unable to pay its bills. When the business was first organized each co-owner normally drew \$40 a week as salary, but later this was increased to \$50 a week. At times they drew more than that, but \$50 a week was the average. (R. 28-33, 36). The receiver testified that the corporation was dissolved in February, 1941, the assets sold, and the proceeds distributed under court order; that petitioner acquired the assets of the corporation for \$650; and that the general creditors received nothing. (R. 64-66.)

The petitioner filed no income tax return for 1922. For the years 1923, 1924, and 1925 he paid taxes of \$18, \$31.13, and \$7.58, respectively, on original and amended returns. For 1926 and 1927 he filed non-taxable returns. During the years 1928 through 1941 he filed no income tax returns except for the years 1930 and 1937, when he filed non-

taxable returns. (R. 72-76; Govt. Ex. 1-F, Tr. 13, 14, R. 684-685.) His income tax returns for 1942 and 1943 disclosed net incomes of \$2,400 and \$2,587, respectively. Petitioner stated on these two returns that he was a salesman employed by the Buckeye Tailoring Company, and reported his income as salary. There was no indication on the returns that he was the owner of the business. (Govt. Ex. 1-G, Tr. 13-14, R. 686-687; Govt. Ex. 1-H, Tr. 13-14, R. 688-689.)

In January, 1931, petitioner borrowed \$250 from a life insurance company, and in April and May, 1931, he repaid this sum. (Govt. Ex. 4-A, R. 15, 722.) In September, 1931, he borrowed \$300 from the same company and, three months later, an additional \$400. This \$700 obligation was paid off in seven installments and was extinguished in May, 1935. (Govt. Ex. 4-B, R. 15, 723.)

In June, 1932, petitioner ceased making principal payments on a mortgage note on which he was obligated to pay \$30 per month plus interest on a \$5,000 liability he assumed in connection with the purchase of realty in 1929. He continued to make interest payments until the mortgagee brought a foreclosure suit late in 1934, and the property was ordered sold. Petitioner then moved for postponement of the sale. In March, 1935, the court stated that the sale would be postponed for six months provided the petitioner would pay the costs (\$10.25), the current taxes, and the sum of \$10 per month to the mortgagee for six months. The petitioner "by his counsel thereupon announced in

open court that he would not be able to comply with those terms", whereupon the court overruled his motion to postpone the sale. (R. 192; Govt. Ex. 29, R. 191, 744-757.)

In March, 1936, a printing company obtained a judgment against petitioner for \$13.76. The writ was returned March 31, 1936, marked "Nothing found to levy on". Execution was reissued early in 1940, and on March 7, 1946, the writ was returned "No goods or chattels found whereon to make a levy". (Govt. Ex. 5-A, R. 17, 724-725.)

In July, 1936, proceedings were brought against petitioner to foreclose the mortgage on the home in which he had formerly lived. Between that time and the actual sale he evidently did his best to save this property, for he made three payments to the mortgagee, one of \$103 and two of \$50 each. When the property was finally sold in September, 1937, a deficiency judgment against petitioner of \$3,570.38 was awarded to the Home Owners Loan Corporation. On August 19, 1939, the writ of execution was returned with the notation "for want of goods or chattels, lands and tenements upon which to levy this writ returned nothing found". In September, 1939, the petitioner settled the \$3,570.38 judgment by paying \$100 to the Home Owners Loan Corporation and was released from further liability. (R. 20-23, 27-28, 189, 494-495; Govt. Ex. 6-A, R. 18, 726-727; Govt. Ex. 6-B, R. 18, 729-731.)

On October 20, 1939, petitioner submitted to the National Life Insurance Company an application

for a Federal Housing Administration loan of \$7,600, together with a net worth statement signed by him in which he listed total assets of \$9,200, including cash on hand of \$150, and total liabilities of \$500. The form contained a statement that to the best of petitioner's "knowledge and belief, the statements, information, and descriptions contained herein are in all respects, true, correct, and complete." (Govt. Ex. 7, R. 19, 732A-732B.)

Special Agent Clager testified that he had made an audit of petitioner's cash receipts books for the years 1941, 1942, and 1943 with particular reference to funds invested in the tailoring business from non-income sources, i.e., funds in the nature of advances or loans; that the books disclosed six such loans in 1941, totaling \$2,700, and four such loans in 1942, totaling \$1,250; that of this \$3,950 so invested, \$2,758.55 came from a savings account in the name of D. F. or F. F. Handler, \$600 came from another savings account, \$500 represented a loan to petitioner from one Nathan Weiss, and the remaining \$91.45 came from an unknown source. (R. 110-115.) It was stipulated that the savings account in the name of Handler actually belonged to petitioner and his wife. (R. 132.) This account being the major source of advances to the business, Clager went a step further and analyzed the deposits from June 24, 1939 (when it was opened), through the year 1943. He testified that there were sixteen deposits into the account during this period, aggregating \$8,319.86; that \$7,024.97 of this was in the form of checks which he was

able to identify;² that \$1,094.81 came from the tailoring business, according to petitioner's books; and that as to \$200.08 (consisting mainly of a \$200 deposit on June 25, 1942) he was unable to ascertain the source of the funds. (R. 132-136; Govt. Ex. 2-C, R. 37-38, 693-702.)

During the years 1943 and 1944 petitioner acquired \$7,781.25 worth of Government bonds. As to \$6,800 of the purchase price there were contemporaneous charges to his checking account of substantially the amounts involved, which tended to show that the bonds were paid for by check. (R. 214-215.) In the later years, however, large acquisitions were made with funds which the agent was unable to trace. During 1945, 1946 and 1947 petitioner acquired a total of \$61,000 of series G and coupon bonds (some of which were purchased in the name of F. F. Handler); over \$32,000 of the funds used for these purchases could not be traced. (R. 215-220; Govt. Ex. 2-U, R. 38, 719-721.)

C. Petitioner's Contentions at the Trial

Petitioner and his wife testified that when they were married in 1915 they had \$3,000 in cash between them and continued to save money in the form of cash until 1943, when they began to invest it; that the fund had grown to \$15,000 by 1922, \$50,000 by 1936, and "far in excess of" \$60,000 by

² One deposit made in July, 1941, in the amount of \$1,030 consisted of a check issued to petitioner by his brother in settlement of petitioner's share of his mother's estate. It was stipulated that this was the only inheritance received by him from his mother. (R. 37, 134.)

1938; that it was always kept in secret places (*e.g.*, cedar chests and safe deposit boxes) and was considered the wife's money, even though earned by petitioner, because she had saved it; that the wife kept a record of the balance on a piece of paper in her handbag but could not state just how much the savings amounted to at any particular time; and that the large apparent net worth increases between 1944 and 1947 merely reflected the investment of these currency savings. (R. 266-275, 305-322, 329-334, 418-419, 430, 463-465, 469-473.) On cross-examination petitioner admitted that he had considered the cash as much his as his wife's (R. 479, 512) and refused to testify as to the approximate percentage of his income he had been able to save on the grounds that he did not "want to incriminate myself any more" (R. 463-464).

SUMMARY OF ARGUMENT

I

Petitioner's main argument is that the jury's verdict, sustained by both courts below, was not warranted by the evidence. The Government failed, he argues, to show that his alleged net worth increases for the years 1945, 1946, and 1947 reflected anything but the investment of a large hoard of cash accumulated years earlier. The argument is refuted by the record.

By his own admission, petitioner's net worth in October of 1939 was \$8,700, including only \$150 in cash on hand. The reliability of this admission was confirmed by evidence reaching back from 1939 to

1922 showing that petitioner's circumstances had been continuously modest, even straitened, throughout this period. Against this evidence, the jury, if it was not compelled, was certainly entitled to disbelieve the testimony of petitioner and his wife that they had accumulated well over \$60,000 in idle cash on hand by 1938.

The assets disclosed by the Government's investigation—bank accounts, real property, business investment, securities—at the end of 1941 revealed a net worth of \$11,768.88, an increase of \$3,000 over October, 1939. It was shown that even this increase was considerable in the light of the fact that petitioner had income too low to require filing of returns in 1939, 1940, and 1941. Similarly, the net worth figures shown at the end of 1942 (\$12,858.53) and 1943 (\$19,911.93) were solidly grounded in the evidence.

Thus, there was a firm starting point for the computations showing huge net worth increases over the prosecution years 1944 through 1947. And other evidence reinforced the conclusion that these were the years of large, unreported earnings. In prior years, petitioner's expenditures and business investments were traceable to withdrawals from interest-bearing bank accounts; in 1945, 1946, and 1947 (the years for which the jury convicted), sizeable purchases of Government bonds—over \$32,000 worth—were made with funds which could not be traced. It was in these later years, too, that petitioner rented under an assumed name a safe deposit box into which he found it necessary to make fre-

quent entries. These facts confirmed the inference that respondent was receiving and dealing in large amounts of unreported cash income during 1945, 1946, and 1947.

In short, the net worth increases during the years for which petitioner was convicted, and the finding that they represented current income unreported in a wilful attempt to evade taxes, are clearly supported by the evidence. The starting point of the computations, more solidly supported than the comparable showing upheld in *United States v. Johnson*, 319 U. S. 503, was convincingly established, defeating petitioner's single contention—that the Government failed to negative the possibility that the stock of cash and bonds he possessed in 1947 reflected only a hoard of idle cash accumulated a decade earlier. The jury's verdict was plainly proper.

II

The Government agent in charge of investigating petitioner's tax returns was properly permitted to explain why the net worth computations showed no undeposited cash on hand at the end of 1941. It is well settled that in a criminal tax case such an agent may testify to the details of a net worth summary and explain its preparation. *United States v. Johnson*, 319 U. S. 503, 519; *Gendelman v. United States*, 191 F. 2d 993, 996-997 (C.A. 9th), certiorari denied, 342 U.S. 909.

The application of this established rule could not possibly have prejudiced petitioner. The agent acknowledged that he had no personal knowledge

as to whether petitioner had cash on hand at the close of 1941. And the trial court carefully charged the jurors that they were sole judges of the facts, free to reject the testimony of experts as well as other witnesses. It is as true here as it was in *United States v. Johnson, supra*, that "No issue was withdrawn from the jury. * * * The jury in this case could not possibly have been misled into the notion that they must accept the calculations of the government expert any more than that they were bound by the calculations made by the defense's expert based on the defendants' assumptions of the case." 319 U. S. at 519.

III

Equally without merit is petitioner's final argument—that his conviction should be reversed because in a supplemental instruction to the jury the trial court expressed the hope that they would "make a sincere effort to compromise and adjust [their] differences and reach a verdict, if possible." The single word "compromise," read in its immediate context and in the context of the full and careful instructions in which the defense could find no ground for objection, resulted in no prejudice. And even if the assertion that there was error were far more persuasive than it is, it would face the decisive answer that petitioner's counsel not only failed to object to the instruction, but expressly and deliberately waived any such objection in his subsequent argument for a new trial. Rule 30, F.R.

Crim. P.; *Johnson v. United States*, 318 U. S. 189, 200-201.

ARGUMENT

I

The Evidence Firmly Established the Petitioner's Net Worth at the Start of the Years in Question

A jury, under instructions which were without dispute correct in defining the quantum of proof necessary for conviction, found petitioner guilty. The trial court and the court of appeals have sustained that verdict. It is elementary that the concurrence of both lower courts in such a finding of fact carries an "assuring strength" (*Delaney v. United States*, 263 U. S. 586, 590) which can be overcome only by the clearest showing of error. In this Court, petitioner undertakes the difficult burden of urging as his primary ground for reversal that the evidence was insufficient to support the verdict. (Pet. Br., Point I, pp. 10-26).

We submit that there is no defect in the detailed proof the Government adduced which could warrant the extraordinary result for which petitioner contends. It is clear, of course, that the verdict petitioner attacks "must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser v. United States*, 315 U. S. 60, 80. See, also, *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 254; *Mortensen v. United States*, 322 U. S. 369, 374; *Abrams v. United States*, 250 U. S. 616, 619; *Gorin v. United States*, 312 U. S. 19, 32; *Goldman v.*

United States, 245 U. S. 474, 477; *Burton v. United States*, 202 U. S. 344, 373. The record in this case amply satisfies this test.

A. *The theory of the prosecution*

The Government's proof that petitioner had wilfully attempted to evade substantial income taxes showed that in each of the four prosecution years the sum of his net worth increases and personal, non-deductible expenditures far exceeded the income reported on his tax returns. Such net worth evidence has been universally recognized in the federal appellate courts as a valid method of proving wilful attempts to evade income taxes. *United States v. Johnson*, 319 U.S. 503, 517;⁴ *Smith v. United States*, 210 F. 2d 496 (C.A. 1st), certiorari granted, 347 U.S. 1010; *United States v. Norris*, 205 F. 2d 828 (C.A. 2d); *United States v. Vassallo*, 181 F. 2d 1006 (C.A. 3d); *Bell v. United States*, 185 F. 2d 302 (C.A. 4th), certiorari denied,

⁴ In the *Johnson* case, *supra*, the method of proof was referred to as the expenditures method, because the Government's computations treated all of Johnson's non-deductible disbursements as expenditures without regard to whether they increased his net worth. Actually, the bulk of Johnson's expenditures represented investments in realty, and if they had been labelled net worth increases rather than expenditures, the result of the computations would have been precisely the same. Petitioner is incorrect in his statement (Br. 3) that in the instant case "No attempt was made . . . to show unusual expenditures." It was proved that he had spent \$61,000 in three years (1945, 1946, and 1947) to purchase U.S. Government bonds, Series G and coupon. (R. 215-220; Govt. Ex. 2, *infra*, p. 57).

340 U.S. 930; *Sasser v. United States*, 208 F. 2d 535 (C.A. 5th); *Gariopy v. United States*, 189 F. 2d 459 (C.A. 6th); *United States v. Chapman*, 168 F. 2d 997 (C.A. 7th), certiorari denied, 335 U.S. 853; *Mitchell v. United States*, 208 F. 2d 854 (C.A. 8th), certiorari denied, 347 U.S. 1012; *Barcott v. United States*, 169 F. 2d 929 (C.A. 9th), certiorari denied, 336 U.S. 912; *Hooper v. United States*, 213 F. 2d 30 (C.A. 10th).

The simple theory of the method is that if a taxpayer realizes during a particular year an increase in net worth which is not attributable to gifts, inheritances, or other non-taxable sources, the increase constitutes a measure of taxable income. If the increase in net worth substantially exceeds reported income, an inference is justified that the taxpayer has received income which he failed to report. It is fundamental that in order to make a *prima facie* case the Government must establish the taxpayer's net worth at the beginning of the period in question with a reasonable degree of certainty; otherwise the increase might be more apparent than real. *Sasser v. United States*, *supra*, p. 537; *Bell v. United States*, *supra*, p. 308; *Brodella v. United States*, 184 F. 2d 823, 824 (C.A. 6th). Proof of a taxpayer's visible assets and his liabilities at the beginning of the prosecution years may not establish firmly the starting point net worth, because the taxpayer may have had other assets, particularly currency, hidden from view. *Bryan v. United States*, 175 F. 2d 223 (C.A. 5th), affirmed, 338 U.S. 552; *United States v. Fenwick*, 177 F. 2d

488 (C.A. 7th). There must be solid evidence to bolster the conclusion that the taxpayer has been given credit for all the assets he owned at the beginning point. Such evidence usually consists of an admission from the taxpayer or the results of an investigation into his financial history prior to the prosecution years. If such evidence is not available and presented, the Government fails to sustain its burden of proof because it has not foreclosed the possibility that what appear on the surface to be net worth increases are in fact merely the result of a change in the form of previously acquired assets. *Bryan v. United States, supra*. But where the Government does present such evidence, its burden is simply to make a *prima facie* case. Its evidence must be sufficiently substantial to warrant a jury in concluding that the defendant did not in fact have concealed assets not revealed in the starting point computation. The Government is not required to refute all conceivable speculation as to the source of a taxpayer's funds or to prove the precise amount of his undeposited cash on hand at the starting point. *Gariepy v. United States, supra*, p. 463; *Schuermann v. United States*, 174 F. 2d 397, 399 (C.A. 8th), certiorari denied, 338 U.S. 831; *Bell v. United States, supra*, p. 308. To impose a stricter and more meticulous burden of proof on the prosecution would, as the Court stated in *Johnson*, "be tantamount to holding that skilful concealment is an invincible barrier to proof." 319 U.S. at 518.

B. *The evidence of petitioner's guilt.*

Petitioner urges (Br. 10-11), as "the sole basic factual issue in the trial," that he had accumulated before the prosecution years a hoard of cash which accounted for the huge net worth increases proved for those years by the Government's evidence.⁵ Isolating this narrow issue, petitioner gives a partial account of the evidence, a fragment at a time (Br. 15-19); arguing the favorable, or harmless, inferences that might conceivably have been drawn from these bits of evidence, he concludes that the jury should not have been permitted to decide the issue of his guilt or innocence. The conclusion is refuted when the full picture the jury saw is reassembled.

1. As we have shown (*supra*, pp. 12-16), the investigation of petitioner's financial history extended back over the years to 1922. Deferring for a moment our reconsideration of the significance of this background (see pp. 30-34, *infra*), our argument on the evidence begins with the significant financial statement signed by petitioner and submitted to an insurance company in October, 1939, long before the investigation leading to this prose-

⁵ All the items in the Government's net worth computation, proved by appropriate evidence, were stipulated to be correct, except for the items of undeposited cash on hand and bonds. See Pet. Br. 3-4, 10-11, R. 120-121. It was these items which posed the issue whether they represented net worth increases in the prosecution years or merely, as petitioner testified (*supra*, pp. 16-17), an accumulation of wealth saved in undeposited cash (i.e., cash kept as such in a box) by 1938.

cution. That statement, it will be recalled, was prepared in support of an application for a Federal Housing Administration loan of \$7,600. Affirming, directly above his signature, that the statement was "in all respects, true, correct, and complete," petitioner showed a net worth of \$8,700, including \$150 in cash on hand. (Govt. Ex. 7, R. 19, 732A-732B.).⁶

Petitioner is correct, of course, when he observes (Br. 25) that the jury was not "required to draw only one inference" from the financial statement of October, 1939. No one so contends. The point, however, is that while it was not *required*, the jury was plainly entitled to conclude that petitioner's statement in 1939, rather than his assertions during the trial and the investigation preceding it, correctly reflected his net worth as of October, 1939. And this inference was made particularly compelling by the evidence reaching back over the years to 1922 which tended strongly to refute the possibility that petitioner's wealth was greater in 1939 than his statement showed.⁷ See pp. 12-16, *supra*, and pp. 30-34, *infra*.

In addition to the October 1939 statement show-

⁶ Petitioner argues (Br. 25) that this statement is incomplete because he did not include certain securities. The record shows, however, that they were in the name of A. Wayne Friedberg, petitioner's son, and that petitioner considered them his son's property. (R. 413; Govt. Ex. 2-N, R. 38, 702, 703-718.)

⁷ Treating the obviously damaging statement of October, 1939, in some detail (Br. 23-26), petitioner argues in effect that the jury should have rejected it as false or incomplete.

ing a net worth of \$8,700, it was proved that petitioner filed no income tax returns for 1939, 1940, and 1941. (R. 76; Govt. Ex. 1-F, Tr. 13-14, R. 684-685.) On petitioner's own testimony that he always filed a return when one was due (R. 435, 519-520), this indicated that his net income was less than \$2,500 in 1939, less than \$2,000 in 1940, and less than \$1,500 in 1941.⁸ In addition to this income, he received an inheritance of \$1,030 in July, 1941. (R. 37, 134.) And on December 31, 1941, the first date covered by the Government's net worth computation (Appendix, *infra*, p. 57), his net worth was shown to be \$11,768.88, an increase of \$3,000 over October

Even if it were appropriate here to undertake the jury's task *de novo*, the argument would be unpersuasive. For example, consider the contention (Br. 25) that the financial statement must have been casual and unreliable because it did not matter to F.H.A. whether "petitioner had \$9,200.00 or \$92,000.00," since the mortgaged property would be the prime security. Just a month before he submitted this financial statement, petitioner had settled a \$3,570.38 deficiency judgment in favor of the Home Owners Loan Corporation for \$100 (*supra*, p. 14). He must have been keenly aware that the mortgaged property did not afford the mortgagee complete protection against loss and that the declaration of a substantial net worth would enhance his chance of getting the loan. Thus, if it were profitable now to start from the premise that the 1939 statement was false, it is apparent that petitioner at that time had reason to overstate rather than to understate his net worth. But the futility of such speculation at this point is plain. What is decisive here is that the jury was entirely justified in believing that petitioner's signed statement correctly showed his net worth in October, 1939.

⁸ Internal Revenue Code of 1939, Sec. 51(a)(2); Revenue Act of 1940, c. 419, 54 Stat. 516, Sec. 7(a); Revenue Act of 1941, c. 412, 55 Stat. 687, Sec. 112(a).

1939.⁹ This determination was solidly supported. If the financial statement of October, 1939, correctly reflected petitioner's net worth at that time—and it was for the jury to decide whether it did (*United States v. Norris*, 205 F. 2d 828, 829 (C.A. 2d))—it can readily be seen that he would have been unable to accumulate a net worth substantially greater than \$11,768.88 by the end of 1941, because (1) the only non-income funds he received in the interim consisted of a check for \$1,030 from his mother's estate, and (2) his income during that period was obviously too low to permit of more than extremely modest savings.

Similarly, carrying the picture to the beginning of 1944, the first of the four prosecution years, the Government showed petitioner's net worth to be \$12,858.53 at the end of 1942 and \$19,911.93 at the end of 1943. These computations revealed an increase in net worth of \$1,089.65 for 1942, or almost

⁹ This net worth figure and the figures for the end of 1942, 1943, and 1944 included no cash on hand. What this means, of course, is not that the petitioner was without a single cent in his pockets, but that the sum he carried with him or kept in drawers at home (the precise amount of which could not be ascertained) was not substantial enough to affect the computation. On the other hand, the conservatism of the agents in not including figures which were not precisely determinable worked in the opposite direction to an extent which was probably more than compensatory. Thus, in listing petitioner's living expenses for each year (expenditures obviously includible in reconstructing his income), the computations showed only insurance premiums, taxes, rentals, and other expenses paid by check. (Govt. Ex. 2, Appendix, *infra*, p. 57.) This omitted undoubtedly sizeable amounts spent in cash over the years for food, entertainment, etc.

50% of petitioner's reported net income of \$2,400, and an increase of \$7,053.40 for 1943, far exceeding his reported net income of \$2,587 for that year.¹⁰ (Govt. Exs. 1-G and 1-H, Tr. 13-14, R. 686-689; Govt. Ex. 2, Appendix, *infra*, p. 57.)

Thus, beginning with the financial statement of 1939, there was a firm basis for the Government's net worth computations to the end of 1943.¹¹ Had there been no other evidence to attest to the completeness and correctness of the agents' determination of the starting-point net worth, the trial judge could properly have submitted the case to the jury. *United States v. Norris*, 205 F. 2d 828, 829 (C. A. 2d); *United States v. Skidmore*, 123 F. 2d 604, 608 (C. A. 7th), certiorari denied, 315 U. S. 800; *United States v. Potson*, 171 F. 2d 495, 498 (C. A. 7th); *Gariepy v. United States*, 189 F. 2d 459, 462 (C. A. 6th); *Banks v. United States*, 204 F. 2d 666, 668-669 (C. A. 8th), certiorari denied, 346 U. S. 857,

¹⁰ Thus the Government established a pattern of evasion beginning in 1943. *Malone v. United States*, 94 F. 2d 281 (C.A. 7th), certiorari denied, 304 U.S. 562; *Emmich v. United States*, 298 Fed. 5 (C.A. 6th), certiorari denied, 266 U.S. 608. Aside from this, however, it is plain that petitioner could not possibly have secreted any currency out of his \$2,587 reported income because he enjoyed an increase in visible assets of \$7,053.40 during that year.

¹¹ It should be noted at this point that the narrow factual issue as it was finally posed at the trial left outside the area of controversy the question of petitioner's net worth increases between 1939 and 1943. For the cash hoard on which the defense relied was asserted by petitioner and his wife to have been fully collected by 1938, thus allegedly accounting for the visible net worth increases for the prosecution years 1944 through 1947.

denial of certiorari vacated, 347 U. S. 1007. Compare *Bryan v. United States*, 175 F. 2d 223, 226-227 (C. A. 5th), affirmed, 338 U. S. 552.

2. It is unnecessary, however, to rest only upon the evidence summarized above. The Government's proof went much further and laid before the jury the results of a painstaking investigation of petitioner's finances from 1922 to the indictment years. This proof served (1) to reinforce the conclusion that petitioner's net worth was no greater in October, 1939, than the \$8,700 shown on his critical financial statement at that time, and (2) by the same token, to refute the claim of petitioner and his wife that they had accumulated over \$60,000 in idle cash on hand by 1938 which accounted for the large net worth increases proved for the later period from 1944 through 1947.

The evidence showed that petitioner filed no income tax return for 1922 and paid only nominal income taxes for the years 1923, 1924, and 1925; that he filed non-taxable returns for 1926 and 1927; and that during the entire period from 1928 through 1941 he filed no income tax returns except for 1930 and 1937, when he filed non-taxable returns. (R. 72-77; Govt. Ex. 1-F, Tr. 13-14, R. 684-685.) On the basis of his admission at the trial (R. 435, 519-520) that he had always filed a return when one was due, his failure to file returns before 1932 indicated an annual net income of less than \$3,500,¹² and his

¹² Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 223; Revenue Act of 1928, c. 852, 45 Stat. 791, Sec. 51.

failure between 1932 and 1938 indicated an annual net income of less than \$2,500.¹³ These facts were obviously relevant and weighty in deciding whether it was conceivable that petitioner had accumulated a large hoard of currency, either by 1938 as he and his wife testified, or by the end of 1943, the point marking the outset of the years covered by the indictment. *Leeby v. United States*, 192 F. 2d 331, 333 (C. A. 8th); *Graves v. United States*, 191 F. 2d 579, 584 (C. A. 10th); *Gariepy v. United States*, 189 F. 2d 459, 463 (C. A. 6th); *Hanson v. United States*, 186 F. 2d 61, 66 (C. A. 8th); *Schuermann v. United States*, 174 F. 2d 397, 399 (C. A. 8th), certiorari denied, 338 U. S. 831; *Lisansky v. United States*, 31 F. 2d 846, 851 (C. A. 4th), certiorari denied, 279 U. S. 873.

The light thrown on petitioner's income during the two decades preceding the prosecution years by his tax filing history was enhanced by direct testimony from a former business associate who, like petitioner, had been one of the co-owners of the Buckeye Tailoring Company from 1922 to 1941. He testified that each of the owners drew an average salary of \$50 a week during those years, and that the business became defunct early in 1941. (R. 28-33, 36.)

There was a wealth of other evidence to show that petitioner had no cash resources during the

¹³ Revenue Act of 1932, c. 209, 47 Stat. 169, Sec. 51; Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 51; Revenue Act of 1936, c. 690, 49 Stat. 1648, Sec. 51; Revenue Act of 1938, c. 289, 52 Stat. 447, Sec. 51.

depression of the 1930's. In 1931 he borrowed small sums on three different occasions from his life insurance company, and it was not until May, 1935, that he managed to liquidate the last of these obligations. (Govt. Exs. 4-A and 4-B, R. 15, 722-723.) By mid-1932 he was no longer able to continue the principal payments of \$30 per month on a real estate mortgage, and two years later the mortgagee brought a foreclosure suit. Petitioner moved the court for postponement of the sale, and the court agreed to grant the motion if petitioner would pay the current taxes and the total sum of \$70.25 to the mortgagee in instalments over the coming six months. Petitioner replied that he was unable to comply with those terms, whereupon his motion to postpone was overruled. (R. 192; Govt. Ex. 29, R. 191, 744-757.) Early in 1936 he was unable to satisfy a \$13.76 judgment, which was returned "Nothing found to levy on." (Govt. Ex. 5-A, R. 17-18, 724-725.) In September, 1937, the mortgage on his former home was foreclosed, the property sold, and a deficiency judgment awarded against him to the Home Owners Loan Corporation in the amount of \$3,570.38. Petitioner had tried vainly to save this property by making three payments between the institution of proceedings and the sale. In September, 1939, the writ of execution was returned "* * * nothing found," and he then settled the \$3,570.38 judgment by paying \$100 to the mortgagee in return for a release from further liability. (R. 21-24, 27-28, 189, 494-495; Govt. Exs. 6-A and 6-B, R. 18, 726-731.)

Against the background of this mass of evidence, pointing irresistibly to the conclusion that petitioner was virtually without liquid assets through the entire depression of the 1930's, petitioner and his wife testified that they had been accumulating currency in secret repositories ever since 1915; that the hoard had grown to \$15,000 by 1922, over \$50,000 by 1936, and "far in excess of" \$60,000 by 1938; that it was considered the wife's money, even though earned by petitioner, because she had saved it; and that it was not until 1943 that they began to remove the money from the safe deposit box and invest it. (R. 264-275, 329-334, 418-419, 430, 463-465, 469-473.) On the "sole basic factual issue" (Pet. Br. 10-11) thus joined, we think the Government's evidence was overwhelming. Even on the cold record, the evidence of petitioner's financial history shows convincingly that his wealth was slight throughout the 1930's. This conclusion was only strengthened by the efforts of petitioner and his wife to show a huge accumulation of undeposited cash by 1938 without showing any apparent source for such an accumulation. At the very least, the jury was entitled to believe petitioner's statement *ante litem motam* in October, 1939, showing his net worth as \$8,700 (with \$150 in cash on hand), rather than his testimony that by 1938 he had accumulated a store of cash far exceeding \$60,000. Having resolved this conflict of testimony against petitioner, and having before it the Government's proof that there could have been no considerable accumulation of cash in the years from

1939 to 1943, the jury could properly draw the natural and logical inference that petitioner had no substantial amount of cash on hand as of December 31, 1943.¹⁴

3. In addition to petitioner's admission in 1939, his prior business and financial history, and his subsequent tax returns, other evidence covering the period after 1939 supported the Government's starting-point determination. The testimony for both the prosecution and the defense reflected a recognition that it would be significant in deciding whether petitioner and his wife had a large hoard of cash before 1943—or, as he claimed, before 1938—to discover whether and when any use was made of such cash. Here, again, the Government's detailed evidence served both to establish the correctness of the net worth computations and to refute convincingly the testimony for petitioner.

Petitioner's wife testified that from the time he became sole proprietor of his business in 1941, she advanced cash funds to the business because he "hadn't any credit." (R. 279.) Pitted against this assertion was the earlier testimony of the

¹⁴ The evidence on this point is stronger than that in the case of *United States v. Johnson*, 319 U.S. 503. Although Johnson was a professional gambler on a vast scale, the only evidence to foreclose the possibility that he had more cash than the Government gave him credit for was a statement "purported to have been made by" him (fixing his cash on hand at the beginning of 1932 at \$78,000) plus his reported income and proved expenditures for the years intervening between 1932 and the prosecution years (1936 to 1939). See *United States v. Johnson*, 123 F. 2d 111, 125 (C.A. 7th), reversed on other grounds, 319 U.S. 503.

Government's special agent who had audited petitioner's cash receipt books for the years 1941, 1942, and 1943. This audit, which concentrated on funds invested in the business from sources other than current income, disclosed that there were six advances in 1941, totaling \$2,700, four in 1942, totaling \$1,250, and none in 1943. It was shown that of this \$3,950 total, \$2,758.55 came from a savings account held by petitioner and his wife in the name of D. F. or F. F. Handler (the wife's maiden name), \$600 came from another savings account, \$500 represented a loan to petitioner from one Weiss, and only \$91.45 came from an unidentified source. (R. 110-115.) The use of funds drawn from interest-bearing savings accounts was at least some evidence from which the jury could reasonably infer that there was no store of idle cash available. See *Barcott v. United States*, 169 F. 2d 929, 932 (C. A. 9th), certiorari denied, 336 U. S. 912. And the jury could properly have found that this inference was fortified by the unpersuasive effort to show that accumulated cash on hand was used for purposes which were proved by documentary evidence to have been served by withdrawals from the bank.

Still further evidence served both to bear out the net worth computations and to show that petitioner was wilfully attempting to evade taxes during the years for which he was convicted. In 1943 and 1944, of petitioner's purchases of Government bonds costing some \$7,700, \$6,800 worth were accompanied by substantially simultaneous with-

drawals from his checking account in approximately the amounts of the purchases. (R. 214-215.) On the other hand, during the period from 1945 through 1947, he acquired a total of \$61,000 in Government Series G and coupon bonds, and more than \$32,000 of the funds used to pay for these bonds could not be traced. (R. 215-220; Govt. Ex. 2-U, R. 38, 719-721.) This evidence, too, supported the conclusion that petitioner realized large increases in net worth during the latter period, and that these did not reflect merely the disclosure of a huge cash accumulation prior to this period—prior even to 1938, according to petitioner and his wife.

The evidence of petitioner's safe deposit box activities is also noteworthy in this same connection. He evidently had no such box from 1935 until May, 1941, though he claimed to have far more than \$60,000 in cash by the end of this period. In May, 1941, he rented a box which was entered only seven times from 1941 through 1943, five times in 1944, and six times between January 1 and April 12, 1945, when the box was surrendered. Meanwhile, on February 6, 1945, he rented a box at another bank in the name of David and Frances Handler, which was entered twenty-seven times in 1945, twenty-two times in 1946, and thirteen times in 1947. (R. 130-131; Govt. Exs. 12-A and 13, R. 67-68, 736-742.) Here was further proof of large acquisitions and dealings in cash during the years 1945 through 1947 rather than in the period ending a decade earlier to which he claimed this wealth was attributable. See *Schuermann v. United States*,

174 F. 2d 397 (C.A. 8th), certiorari denied, 338 U. S. 831; *Gariepy v. United States*, 189 F. 2d 459, 463 (C.A. 6th); *United States v. Boyer*, 110 F. Supp. 592, 597 (N.D. W. Va.).

We submit, in sum, that the evidence summarized above, together with the other evidence of fraud and concealment reviewed in our Statement,¹⁵ amply justified the jury's verdict that petitioner had wilfully attempted to evade income taxes during the years 1945, 1946, and 1947. Since it is the single factual issue petitioner raises, we have concerned ourselves primarily with the question

¹⁵ For example (see pp. 7-9, *supra*), the discrepancies between petitioner's books and income tax returns, the many false entries by which income was credited to a Friedberg loan account rather than to sales, the proved falsity of petitioner's explanations of these manipulations to the Treasury agent, and the general inadequacy of his records to enable the agent to determine his true income tax liability. It should be noted here that petitioner errs in contending (Br. 7, 11-12, 32) that the Government undertook to establish unreported income by proving the falsity of the Friedberg loan entries. Since the gross receipts reported on the returns exceeded the sum of the Friedberg loan entries and the gross receipts recorded as such in the books (R. 162-168), and since there was no way to determine how petitioner had arrived at his reported gross receipts figures (R. 170), the agent could not possibly determine whether the Friedberg loan items had been reported as income (R. 166-170, 176, 186). However, evidence of the so-called Friedberg loans went to the element of wilfulness, by showing (1) the falsity of petitioner's books, and (2) the falsity of his explanations of their falsity. This evidence that the books were incorrect and unreliable also obviated the possible argument that the net worth method could not be used without such a showing. Though the argument—raised in the pending case of *Holland v. United States*, No. 37—is erroneous in our view, it has been accepted by some courts. See, e.g., *United States v. Riganto*, 121 F. Supp. 158 (E.D. Va.).

whether the starting point of the Government's computations was sufficiently established, *i.e.*, whether the jury could reasonably conclude that petitioner's opening net worth was correctly shown in the Government's proof and had not included any such large hoard of cash as petitioner claimed to have accumulated long before the prosecution years. On this issue, we believe, the evidence in the record more than satisfies the requirement of substantiality by which the jury's verdict is to be tested on appeal.

II

The Trial Court Properly Permitted the Treasury Agent to Explain Why He Excluded Cash on Hand in His Computation of Petitioner's Net Worth at the End of 1941

Petitioner contends (Br. 26-28) that the trial court erred in permitting Special Agent Clager to state his reasons for not having included currency on hand in his computation of petitioner's net worth as of December 31, 1941. The facts bearing on this issue are as follows:

The agent testified on direct examination that he had prepared a statement of petitioner's net worth as of the end of 1941 and the end of each succeeding year through 1947; that he had listed all of the assets and liabilities disclosed by the investigation; and that at the end of 1941 those assets consisted of cash in banks, securities, investment in the Buckeye Tailoring Company, household furnishings, and unimproved realty. (R. 115-119; Govt. Ex. 2, *infra*, p. 57.) On cross-examination the agent admitted that if he had omitted any figures from the

computation the entire statement would be inaccurate. (R. 137-138.) When defense counsel asked whether he had credited petitioner with any currency at the end of 1941, he stated that he had not (R. 138) and then, pursuant to the court's ruling that he might explain his answer, said (R. 139):

I did not include currency at the end of the year 1941 because my investigation disclosed no evidence which would permit me to put such a figure of currency in my schedule.

Later, on redirect examination, the agent was permitted to explain in more detail why he had excluded currency from his computation. He testified that his investigation disclosed that petitioner had borrowed money in 1931 at 6 per cent interest and had not repaid it until 1935; that he had refinanced his home in 1933 through the Home Owners Loan Corporation and later had settled a deficiency judgment of about \$3,000 for \$100; that two other deficiency judgments had been obtained against petitioner during the 1930's in connection with mortgage foreclosures; that in October, 1939, petitioner had filed a financial statement with a life insurance company in connection with a loan, in which he stated that he had cash on hand of \$150; that he (the agent) had examined petitioner's sources of capital as shown by his records for 1941 and 1942 and had found no indication of currency from an undisclosed source; and that on the basis of this investigation he could see no reason for including a substantial amount of cash on hand in

his computation of petitioner's net worth at the end of 1941. (R. 188-190.)

Petitioner argues (Br. 27-28) that this testimony was in the nature of an argument to the jury, and that it was improper because it permitted the witness to invade the jury's province by stating his conclusion on the ultimate issue.¹⁶ We submit that the agent was not stating a conclusion on the ultimate issue but was explaining his reasons for preparing Government's Exhibit 2 as he had. It is well settled that in a criminal tax case the agent preparing a net worth summary may testify as to its details and explain its preparation. *United States v. Johnson*, 319 U. S. 503, 519; *Gendelman v. United States*, 191 F. 2d 993, 996-997 (C.A. 9), certiorari denied, 342 U. S. 909; *Bateman v. United States*, 212 F. 2d 61, 68 (C.A. 9); *Banks v. United States*, *supra*, pp. 670-671. And the ultimate issue was not whether there was substantial cash on hand at the end of 1941, but whether all of the evidence proved beyond a reasonable doubt that petitioner had wilfully attempted to evade and defeat his income taxes. The element of cash on hand con-

¹⁶ Petitioner also contends (Br. 27) that Clager was not an expert witness, but no such contention was made at the trial, nor was any of his testimony objected to on that ground. And in the Court of Appeals (Appellant's Br. 28) it was specifically conceded that Clager was an expert. Clager had forty-five academic credit hours in accounting at Ohio State University and had served as a Special Agent for six years at the time he gave his testimony. (R. 92, 137.) He was in full charge of the investigation and testified as an expert in the same manner that the agent testified in the *Johnson* case, 319 U.S. 503, 519.

cerned only one item—though a crucial one—of petitioner's net worth, and was therefore a supporting or evidentiary matter.

It was defense counsel who opened the door to this testimony by questioning the agent on the point and insisting upon an answer, although it was crystal clear from his testimony on direct examination that he had included no currency in 1941. (R. 116-119). Surely the witness had a right, as the court held (R. 117), to "state the factual background upon which he arrived at his net worth conclusion." We submit that in asking these questions on cross-examination defense counsel necessarily assumed the risk that the court might permit the witness to explain his answers, and that the explanation might not please him.¹⁷

It is clear, in any event, that the other testimony of the Government's agent and the court's instructions gave ample assurance that petitioner would not be prejudiced by the testimony he invited and then attacked. The agent acknowledged on the stand that he had no personal knowledge as to whether petitioner had cash in his safe deposit box at any time (R. 141-143).¹⁸ And the trial court carefully charged the jury that they were the sole

¹⁷ Petitioner's trial counsel was apparently not much concerned about the possibility that Clager's testimony on this issue might prejudice the jury, for he later put the same sort of questions to another agent, got the same sort of response, and interposed no objection. (R. 205-206.)

¹⁸ Clager was not present when two agents saw the \$19,600 in currency in petitioner's safe deposit box in October, 1947, not being assigned to the case at that time. (R. 79-80, 92.)

judges of the facts, the credibility of the witnesses, and the weight of the evidence (R. 641-642). Later in his charge, the judge made special reference to expert testimony in the following language (R. 651):

* * * The law allows those skilled in that special field to express opinions, and upon a hypothetical state of facts given them, to say whether or not, according to their experience and research, a fact may, or may not, exist. But nevertheless, while such opinions are allowed to be given, it is entirely within the province of the jury to say what weight shall be given to them. Jurors are not bound by the testimony of experts. Their testimony is to be canvassed and weighed as that of any other witness. Just as far as their testimony appeals to your judgment, convincing you of its truth, you should adopt it, but the mere fact that a witness is called an expert, and gives opinions upon a particular point, does not necessarily obligate the jury to accept his opinions as to what the facts are.

In these circumstances, there is no basis for assuming that the jury was ever in doubt that it was for them to decide the controverted issues of fact. For the trial judge clearly understood and properly instructed on the rule that the correctness or credibility of materials underlying an expert's answers is not foreclosed by the expert's testimony or withdrawn from the independent determination of the

jury. *United States v. Johnson*, 319 U. S. 503, 519; *Gendelman v. United States*, 191 F. 2d 993, 997 (C. A. 9), certiorari denied, 342 U. S. 909; *Cave v. United States*, 159 F. 2d 464, 468 (C. A. 8), certiorari denied, 331 U. S. 847. The jury was clearly apprised of its freedom either to accept or reject the government agent's premises or conclusions, just as it rejected an elaborate reconstruction of income by petitioner's accountant (R. 585-600) which purported to show that there was no unreported income. Appropriate here is the language of this Court in the *Johnson* case rejecting a contention similar to the present petitioner's (319 U. S. at 519):

* * * No issue was withdrawn from the jury. The correctness or credibility of no materials underlying the expert's answers was even remotely foreclosed by the expert's testimony or withdrawn from proper independent determination by the jury. The judge's charge was so clear and correct that no objection was made * * *. The worth of our jury system is constantly and properly extolled, but an argument such as that which we are rejecting tacitly assumes that juries are too stupid to see the drift of evidence. The jury in this case could not possibly have been misled into the notion that they must accept the calculations of the government expert any more than that they were bound by the calculations made by the defense's expert based on the defendants' as-

sumptions of the case. So long as proper guidance by a trial court leaves the jury free to exercise its untrammelled judgment upon the worth and weight of testimony, and nothing is done to impair its freedom to bring in its verdict and not someone else's we ought not to be too finicky or fearful in allowing some discretion to trial judges in the conduct of a trial and in the appropriate submission of evidence within the general framework of familiar exclusionary rules.

III

The Trial Court Committed No Reversible Error in His Supplemental Instruction to the Jury

The case was submitted to the jury on the afternoon of January 10, 1952. After four hours and twenty minutes of deliberation on January 10 and January 11 (R. 653), the court, in releasing the jury for lunch, stated (R. 654):

The Court will stand in recess until one-thirty. The Court may say to the jury at this time that I want you to make an honest and sincere effort to reach an agreement as to the merits of this case. I do not want you to shirk your duty. I want you to be fair to the Government, the United States, and the defendant. Nevertheless, this case has taken many days to try, and I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict, if possible.

No objection was made to this supplemental instruction. At 3:15 p. m. the same day the jury returned its verdict. (R. 654-655).

In arguing a motion for a new trial one week later, defense counsel stated (R. 655):

Your Honor was, beyond any question of a doubt, extremely fair to the defendant and to the Government. The charge, which involved a very intricate phase of law which is most difficult to grasp and understand, was entirely fair in every respect, and I am quite conscious of the fact that I am stating this into a record which is a permanent record * * *.

In his argument (R. 655-661) defense counsel made no reference to the supplemental instruction now complained of, although he had apparently mentioned it in his brief. The trial court commented on this omission, read the instruction aloud and asked whether defense counsel claimed error. (R. 661-662). The following exchange then took place (R. 662-663):

The COURT: Counsel have been very fair with the Court throughout the trial of this case, and I want to commend you for that. You have been a partisan, but the Court will take judicial notice of the fact that you have a right to be a partisan. You have been eminently fair in your presentation to the Court; however, the Court was more or less disturbed as to how much importance you were attaching to the sua sponte instruction of the Court at the time

the jury went to lunch, as to whether or not you were seriously contending that the charge which the Court has just read to you, which was given at the luncheon period with the thought in mind that it might assist the jury in compromising and adjusting their differences and reaching a verdict, whether it be guilty or not guilty, was in error, whether or not you are insisting on that as a ground of error in this case.

Mr. SILLMAN: No, we are not.

The COURT: Then you are not insisting upon this special instruction which the Court has just called to your attention?

Mr. SILLMAN: I think it is correct. I think Your Honor gave it absolutely correct. I don't think we have at any place said it was incorrect.

The COURT: After quoting the Court's charge you say, "The jury apparently took literally the Court's suggestion and brought in this split verdict within a relatively short time after returning from lunch. Furthermore, in view of the nature of the evidence, the verdict of not guilty on count 1 has the effect of exonerating the defendant as to all counts of the indictment."

Of course, that goes on. I am interested alone in this instruction which the Court gave.

Mr. SILLMAN: I think your instruction was correct.

Petitioner now contends (Br. 29-33) that it was error for the judge to have used the word "compro-

mise" in the supplemental instruction. It resulted, he argues (Br. 29, 32), in an improperly induced "compromise verdict" of not guilty on Count I and guilty on the other three counts.¹⁹ The argument fails, we submit, (1) because it is fallacious on its merits and (2) because it was consciously and deliberately waived in the trial court where it should have been raised.

1. Petitioner plucks a single word from context and argues at length that it was erroneous. Implicit in his argument is the contention that the jury paid more attention to the word "compromise" than to all of the other instructions combined. We think the word, first of all, must be read in the context of the sentence. The terms "hope", "sincere effort", "adjust your differences", and "if possible" obviously must be accorded some importance. And the sentence must be read in connection with the rest of the supplemental charge

¹⁹ Petitioner declares (Br. 6) that this verdict of not guilty on one count and guilty on the other three is "a rather strange decision in an increased net worth case." Actually, as we point out below (pp. 50-52), the record in this case makes such a resolution of the issues perfectly reasonable and understandable. And there is nothing in the nature of a prosecution of this type which requires as an abstract proposition that the jury's verdict be the same on all counts. Cf. *United States v. Skidmore*, 123 F. 2d 604 (C.A. 7th), certiorari denied, 315 U.S. 800; *United States v. Norris*, 205 F. 2d 828 (C.A. 2d); *Graves v. United States*, 191 F. 2d 579 (C.A. 10th); *Dawley v. United States*, 186 F. 2d 978 (C.A. 4th); *Remmer v. United States*, 205 F. 2d 277 (C.A. 9th), vacated and remanded on other grounds, 347 U.S. 227; *Holland v. United States*, 209 F. 2d 516 (C.A. 9th), pending on writ of certiorari, No. 37 this Term; *Mitchell v. United States*, 208 F. 2d 854 (C.A. 8th), certiorari denied, 347 U.S. 1012.

and the entire original charge, for whether a jury is properly instructed cannot be determined from consideration of a single paragraph, sentence, phrase, or word. *Eoyd v. United States*, 271 U.S. 104, 107; *Moffitt v. United States*, 154 F. 2d 402, 405 (C.A. 10), certiorari denied, 328 U.S. 853; *United States v. Schiller*, 187 F. 2d 572, 574 (C.A. 2).

In his principal charge, the judge expounded the law so clearly and went to such lengths to protect the petitioner that he received high praise from defense counsel. (R. 655.) The court emphasized and re-emphasized that the burden was squarely on the Government to prove the defendant's guilt beyond a reasonable doubt, carefully explained to the jury its role and its responsibilities, and instructed that if the evidence could be reconciled with any reasonable theory consistent with innocence it was their duty to acquit. He explained the essential elements of the offenses charged and the nature and theory of the net worth method. He repeatedly stated that each count was to be tried just as though it were standing alone as a separate charge, and cautioned that a verdict of guilty could not be returned on any count unless the jury was satisfied that the Government had proved beyond a reasonable doubt each of the essential elements of the offense charged in that particular count. He stated that "all twelve jurors must agree upon the verdict returned" and that "No verdict can be returned unless you all concur in it." (R. 641-653.) No objection was made to any part of the charge.

Read in the light of the principal instructions, the single word complained of dwindles into insignificance. No juror could possibly have been misled into the notion that he must surrender his judgment in order to arrive at a prompt and unanimous verdict merely because the judge stated " * * * I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict, if possible." (R. 654.) Surely no juror who had a reasonable doubt as to the petitioner's guilt would have forsaken his honest convictions on the latter three counts in exchange for a general agreement to acquit on Count I. An acquittal on one count would be cold comfort to a defendant found guilty on three others, and no juror could have been so stupid or so callous as to suppose anything to the contrary. The issues were simple and clearly drawn, and "any jury unable to maintain its individual and collective independence against such a charge, standing by itself, would have been no better than a sounding board for any judicial whisper." See *United States v. Samuel Dunkel & Co.*, 173 F. 2d 506, 509 (C.A. 2d). The court's use of the word "compromise" was, at the very worst, a minor aberration in a long trial. Presumably the petitioner would never have raised the issue if the court had suggested that the jury "reconcile and adjust" their differences. See *Allen v. United States*, 164 U.S. 492, 501; *United States v. Allis*, 73 Fed. 165, 182-183 (C.C. E.D. Kans.), affirmed, 155 U.S. 117; *Weathers v. United*

States, 126 F. 2d 118 (C.A. 5th), certiorari denied, 316 U.S. 681.²⁰

Petitioner errs in his suggestion that the verdict was no more than an arbitrary and unreasoned compromise. Apart from the dispositive point that a jury's verdict is not required to be consistent (*Dunn v. United States*, 284 U.S. 390), the fact is that the verdict in this case of not guilty on Count I and guilty on the remaining counts evidently reflects a fair and careful appraisal of the evidence. As to Count I, involving the year 1944, there was no evidence of wilfulness except the understatement of income, and that understatement was the smallest of any year. There was testimony by a Government witness that during the first eleven months of 1944 all of the income from the business was entered on the books. (R. 50-51.) Income from alteration work was recorded regularly in the cash receipts book during 1944, but not recorded at all in 1945, 1946, and 1947. (R. 95-96.)

²⁰ Petitioner argues (Br. 29) that the action of the jury in returning a verdict after only one hour and forty-five minutes of deliberation following the supplemental instruction indicates that it was unduly influenced by the court. In *Hyde v. United States*, 225 U.S. 347, a jury had been unable to agree after three days and nights of deliberations. In a supplemental instruction the court suggested that they consider the possibility of guilt of some of the defendants and not of others. Shortly afterward the jury returned a verdict of guilty as to two defendants and not guilty as to two others. The defendants argued that the verdict was the result of an agreement between those jurors who believed all of the defendants to be innocent, and those who believed them all to be guilty, to exchange the two convictions for the two acquittals. This Court found no merit in the contention and affirmed the convictions. See 225 U.S. at 381-383.

There were no false entries in the 1944 books by which income was credited to a loan account (R. 575), but there were many such entries during the later years, when petitioner's wife kept the books (R. 96, 278). It was not until May, 1945, that petitioner began to acquire substantial assets with currency. (R. 215-219.) In 1944 he was renting a safe deposit box in his true name, and visited it only five times, but in February, 1945, he rented a box in an assumed name and in less than three years visited it ^{over}sixty-two times. (R. 80, 131; Govt. Exs. 12-A and 13, R. 67-68, 736-742.) When the Treasury agents examined this box at the beginning of the investigation they found no currency in envelopes bearing 1944 dates, but much bearing later dates. (R. 81-82.) It was the prosecutor's theory that the bulk of the unreported income came from the sale of ready-made suits (R. 665), a line of business which petitioner did not enter until 1945 (R. 380, 451, 500-501).²¹ In brief, the Government's proof as to Count I could reasonably have been deemed inferior to that for the later years, and the jury's verdict on that count depended entirely upon the inferences they were willing to draw from the understatement of income alone. As to the later years, the understatements of income were considerably greater and the record abounds with other strong indications of deliberate concealment of income and assets. The jury's ver-

²¹ In arguing the motion for a new trial, the prosecutor stated that he had said "not over two dozen words about 1944" in his argument to the jury. (R. 665.)

dict shows clearly that they understood the evidence and weighed it with discrimination.

There is no basis in the record for petitioner's contrary view (Br. 32) that the "four and one half weeks of trial" had resulted in weariness for the jury, and that the only explanation for the verdict acquitting on one count and convicting on three is the supplemental instruction, "which following the confusion in the minds of the jurors, and the weariness in their bodies, 'cumulated' in a purely compromise verdict." The reference to confusion on the part of the jury is a mere assertion with nothing in the record to support it.²² As for their alleged weariness, the transcript shows that by agreement of counsel the case was continued from December 20, 1951, to January 2, 1952. (Tr. 522, 575.) Thus, the trial, which began on December 11 (R. 3) and was concluded on January 11 (R. 653-654), was interrupted by a twelve-day holiday which gave the jury ample opportunity to rest. The case of *United States v. Donnelly*, 179 F. 2d 227 (C.A. 7), quoted from by petitioner (Br. 32-33), involved cumulative errors in the reception of evidence and in instructing the jury and is obviously not in point.

We submit, in sum, that neither the imagined weariness of the jury nor the supposition that, after careful and detailed instructions, they were wholly misled by the word "compromise" in the supplemental instruction casts doubt upon the validity of

²² Here petitioner again mistakenly claims (Br. 32) that the Government tried to prove unreported income on the basis of the Friedberg loan entries. See footnote 15, *supra*, p. 37.

the verdict. Even if these arguments were not fatally tardy, they could not prevail.

2. In addition, however, as petitioner acknowledges (Br. 29-30), his counsel (whose competence is clear from a reading of the record) not only failed to object in the trial court to the supplemental instruction, but expressly waived the point in arguing his motion for a new trial one week later. And so his argument meets the obstacle, decisive here, that error in the court's instructions may not ordinarily be assigned on appeal unless timely objection was made at the trial. Rule 30, Federal Rules of Criminal Procedure; *Johnson v. United States*, 318 U.S. 189, 200-201; *Wong Tai v. United States*, 273 U.S. 77, 83; *Boyd v. United States*, 271 U.S. 104, 107-108.

This rule is founded upon familiar considerations of fairness to the court and to the parties, and of the public interest in bringing litigation to an end after a fair opportunity has been afforded to present all issues of law and fact. *United States v. Atkinson*, 297 U.S. 157, 159; *Johnson v. United States*, *supra*, p. 201. It serves the vital purpose of giving the trial court an opportunity to make any corrections which it thinks are proper and thus to minimize the possibility of error. *United States v. Furlong*, 194 F. 2d 1 (C.A. 7th), certiorari denied, 343 U.S. 950; *Finnegan v. United States*, 204 F. 2d 105, 115 (C.A. 8th), certiorari denied, 346 U.S. 821. The rule has exceptions, to be sure; a clear and fundamental error resulting in a grave miscarriage of justice may warrant consideration and reversal by an appellate court despite failure to raise it in

the trial court. See *Screws v. United States*, 325 U.S. 91, 107; *United States v. Atkinson*, *supra*, at 160. And Rule 52(b) of the Rules of Criminal Procedure, upon which petitioner relies, permits consideration of "Plain errors or defects affecting substantial rights * * * although they were not brought to the attention of the court." But these exceptions are no help to the petitioner here.

We believe, as we have argued (*supra*, pp. 47-53), that the instruction petitioner attacks would not warrant reversal under any circumstances. However this may be, the alleged error is obviously not the kind of fundamental or "plain" defect "affecting substantial rights" which could warrant a departure in this case from the salutary principle precluding the belated presentation of objections for the first time on appeal after the trial court's opportunity to meet them has passed. Nor is there substance in the suggestion (Pet. Br. 31-32) that, because the trial court's statement petitioner attacks was not part of the original formal "charge," there is no occasion for applying the requirement that objections be presented to the trial court. There was undenied and undeniable opportunity to object. Indeed, if the asserted error even approached the gravity with which petitioner now endows it, one would have expected prompt and vigorous objection on the spot. And, of course, along with the opportunity to object, there was the trial court's opportunity to take any corrective action which might have been deemed appropriate. There existed, in a word, the precise situation which calls into play the requirement of timely objection.

The failure to enter such an objection was clearly not inadvertent. In arguing his motion for a new trial a week later, petitioner's counsel five times specifically disclaimed any contention that there was error in the supplemental instruction. (R. 662-663.) And the argument that these express waivers carry "no more weight than a negative refusal to voice an objection"²³ is plainly erroneous. Petitioner's effort to overcome the decisive abandonment of his objection in the trial court is squarely opposed by what this Court said of a comparable effort in *Johnson v. United States*, 318 U.S. 189, 200-201 (quoting Mr. Justice Sutherland in *United States v. Manton*, 107 F. 2d 834, 848):

"If the failure to enter an exception or assign error had been a mere inadvertence the matter might stand in a different light. But that view cannot be indulged. Plainly enough, counsel consciously and intentionally failed to save the point and led the trial judge to understand that counsel was satisfied. We see no warrant for the exercise of our discretion to set aside standing rules, so necessary to the due and orderly administration of justice, and review the challenge to the legal accuracy of the charge where, as here, the failure of the judge to follow the text of the requested instruction was, at the last, induced by the action of counsel * * *."

Any other course would not comport with the

²³ The quoted phrase appears on page 5 of petitioner's brief in reply to the Government's brief in opposition to certiorari.

standards for the administration of criminal justice. We cannot permit an accused to elect to pursue one course at the trial and then, when that has proved to be unprofitable, to insist on appeal that the course which he rejected at the trial be reopened to him. However unwise the first choice may have been, the range of waiver is wide. Since the protection which could have been obtained was plainly waived, the accused cannot now be heard to charge the court with depriving him of a fair trial. * * *

CONCLUSION

Petitioner was properly convicted. The evidence was sufficient to warrant submission of the case to the jury and to support the verdict. The judgment should be affirmed.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

H. BRIAN HOLLAND,
Assistant Attorney General.

MARVIN E. FRANKEL,
ELLIS N. SLACK,
DAVID L. LUCE,
RICHARD B. BUHRMAN,
*Special Assistants to the
Attorney General.*

SEPTEMBER, 1954.

APPENDIX

GOVERNMENT'S EXHIBIT 2

In re: David F. Friedberg
Columbus, Ohio
Case No. 5972

Assets		12-31-'41	12-31-'42	12-31-'43	12-31-'44	12-31-'45
Cash on Hand		\$00.00	\$00.00	\$00.00	\$00.00	\$2,000.00
Bank Accounts	Account No. In name of					
Ohio National Bank, High-Town Office	Checking Buckeye Tailoring Company	635.34	641.27	2,669.35	4,850.08	571.88
Park Federal Savings & Loan Ass'n.	3,472 Frances F. or David Friedberg	874.41	0	0	0	0
First Federal Savings & Loan Ass'n.	8,070 D. F. or F. F. Handler	4,133.94	3,997.26	4,080.98	6,061.46	854.38
First Federal Savings & Loan Ass'n.	12,951 A. Wayne Friedberg		0	312.13	0	
First Federal Savings & Loan Ass'n.	13,980 A. Wayne or Frances Friedberg			0	886.73	1,007.50
First Federal Savings & Loan Ass'n.	13,889 Elaine or Frances Friedberg			0	276.77	302.25
Buckeye State Building and Loan Company	98,575 Frances F. or David Friedberg		0	614.97	0	
Buckeye State Building and Loan Company	70,855 Frances F. or David Friedberg			0	3,475.03	0
Franklin Federal Savings & Loan Ass'n.	12,743 Frances or David Friedberg			0	1,413.29	2,047.37
Dollar Federal Savings and Loan Ass'n.	3,280 Frances F. or David Friedberg					
Dollar Federal Savings and Loan Ass'n.	3,303 David or Frances Friedberg					
Dollar Federal Savings and Loan Ass'n.	3,342 Elaine F. or Frances Friedberg					
Dollar Federal Savings and Loan Ass'n.	3,343 A. Wayne or Frances Friedberg					
Securities						
Stocks		1,970.00	1,970.00	1,970.00	1,970.00	0
U. S. Bonds, Series E.		0	150.00	3,562.50	7,931.25	9,487.50
U. S. Bonds, Series G, and Coupon				0	0	31,000.00
Brokerage Account—Vercos and Company in name of A. Wayne Friedberg						0
Buckeye Tailoring Company—Merchandise Inventory		855.19	4,260.00	4,822.00	5,691.06	5,102.00
Buckeye Tailoring Company—Equipment (adjusted basis)		600.00	540.00	480.00	420.00	360.00
Household—Furnishings		1,500.00	1,500.00	1,500.00	1,500.00	1,500.00
Unimproved property—Roosevelt Avenue		1,450.00	0			
Unimproved property—O'Shaughnessy Hills		200.00	200.00	200.00	200.00	200.00
Total Assets		\$12,218.88	\$13,258.53	\$20,211.93	\$34,675.67	\$54,432.88
Liabilities						
Note Payable—Nathan Weiss		450.00	400.00	300.00	250.00	0
Net Worth		\$11,768.88	\$12,858.53	\$19,911.93	\$34,425.67	\$54,432.88
Less: Non-taxable capital gain		0	0	0	0	425.57
Net Worth		\$11,768.88	\$12,858.53	\$19,911.93	\$34,425.67	\$54,007.31
Less: Prior year net worth			11,768.88	12,858.53	19,911.93	34,425.67
Taxable net worth increase			\$1,089.65	\$7,053.40	\$14,513.74	\$19,581.64
Add:						
Personal Expenses						
Life Insurance Premiums					\$653.51	\$652.61
Income Tax					193.43	715.20
Rental—personal residence					786.00	780.00
Other expenses paid by check					0	439.73
Total					\$1,626.94	\$2,587.54
Net Worth Increase and personal living expenses					\$16,140.68	\$22,169.18
Less: Standard Deduction					500.00	500.00
Net Income					\$15,640.68	\$21,669.18

APPENDIX

GOVERNMENT'S EXHIBIT 2

David F. Friedberg
Columbus, Ohio
972

Assets			12-31-'41	12-31-'42	12-31-'43	12-31-'44	12-31-'45	12-31-'46	12-31-'47
			\$00.00	\$00.00	\$00.00	\$00.00	\$2,000.00	\$5,000.00	\$14,842.36
and	Account No.	In name of							
Units									
National Bank, High-Town Office	Checking	Buckeye Tailoring Company	635.34	641.27	2,669.35	4,850.08	571.88	1,010.74	1,123.18
General Savings & Loan Ass'n.	3,472	Frances F. or David Friedberg	874.41	0	0	0	0	0	0
General Savings & Loan Ass'n.	8,070	D. F. or F. F. Handler	4,133.94	3,997.26	4,080.98	6,061.46	854.38	5,434.23	0
General Savings & Loan Ass'n.	12,951	A. Wayne Friedberg		0	312.13	0			
General Savings & Loan Ass'n.	13,980	A. Wayne or Frances Friedberg			0	886.73	1,007.50	1,379.77	0
General Savings & Loan Ass'n.	13,889	Elaine or Frances Friedberg			0	276.77	302.25	804.50	0
State Building and Loan Company	98,575	Frances F. or David Friedberg		0	614.97	0			
State Building and Loan Company	70,855	Frances F. or David Friedberg			0	3,475.03	0		
Federal Savings & Loan Ass'n.	12,743	Frances or David Friedberg			0	1,413.29	2,047.37	2,088.52	0
Federal Savings and Loan Ass'n.	3,280	Frances F. or David Friedberg						0	6,000.00
Federal Savings and Loan Ass'n.	3,303	David or Frances Friedberg						0	6,000.00
Federal Savings and Loan Ass'n.	3,342	Elaine F. or Frances Friedberg						0	1,100.00
Federal Savings and Loan Ass'n.	3,343	A. Wayne or Frances Friedberg						0	1,415.00
Bonds, Series E			1,970.00	1,970.00	1,970.00	1,970.00	0	0	4,757.54
Bonds, Series G, and Coupon			0	150.00	3,562.50	7,931.25	9,487.50	9,487.50	9,487.50
Account—Vercor and Company in name of A. Wayne Friedberg					0	0	31,900.00	41,000.00	61,000.00
Tailoring Company—Merchandise Inventory			855.19	4,260.00	4,822.00	5,691.06	5,102.00	6,863.00	8,993.60
Tailoring Company—Equipment (adjusted basis)			600.00	540.00	480.00	420.00	360.00	300.00	240.00
—Furnishings			1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00
Real property—Roosevelt Avenue			1,450.00	0					
Real property—O'Shaughnessy Hills			200.00	200.00	200.00	200.00	200.00	200.00	200.00
Total Assets			\$12,218.88	\$13,258.53	\$20,211.93	\$34,675.67	\$54,432.88	\$76,068.26	\$116,659.18
Liabilities									
Payable—Nathan Weiss			450.00	400.00	300.00	250.00	0	0	0
Net Worth			\$11,768.88	\$12,858.53	\$19,911.93	\$34,425.67	\$54,432.88	\$76,068.26	\$116,659.18
Non-taxable capital gain			0	0	0	0	425.57	0	0
Net Worth			\$11,768.88	\$12,858.53	\$19,911.93	\$34,425.67	\$54,007.31	\$76,068.26	\$116,659.18
Prior year net worth				11,768.88	12,858.53	19,911.93	34,425.67	54,432.88	76,068.26
Net worth increase				\$1,089.65	\$7,053.40	\$14,513.74	\$19,581.64	\$21,635.38	\$40,590.92
Expenses									
Insurance Premiums						\$653.51	\$652.61	\$651.66	\$302.21
Tax						193.43	715.20	(6.20)	210.00
—personal residence						780.00	780.00	780.00	810.00
Expenses paid by check						0	439.73	474.50	863.78
Total						\$1,626.94	\$2,587.54	\$1,899.96	\$2,185.99
Net Worth Increase and personal living expenses						\$16,140.68	\$22,169.18	\$23,535.34	\$42,776.91
Standard Deduction						500.00	500.00	500.00	500.00
Net Income						\$15,640.68	\$21,669.18	\$23,035.34	\$42,276.91

MAR 20 1954

HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. [REDACTED]

18

DAVID FRIEDBERG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

PETITION FOR REHEARING

ROBERT N. GORMAN,
STANLEY A. SILVERSTEEN,
Attorneys for Petitioner,
808 Traction Building,
Cincinnati 2, Ohio.

CASES CITED

	PAGE
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United States v. Johnson, 319 U. S. 503	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 510

DAVID FRIEDBERG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

PETITION FOR REHEARING

Petitioner's chief contention was that a conflict existed between the Courts of Appeal of various circuits on the question of what constitutes sufficient proof of income understatement, under the net worth method. The specific issue involved was proof of the starting point net worth. Petitioner pointed out that the Courts of Appeal for the Fifth Circuit (*Bryan v. United States*, 175 Fed. [2d] 223), and for the Seventh Circuit (*United States v. Fenwick*,

177 Fed. [2d] 488) require strict proof of the starting point net worth. The Courts of Appeal for the Ninth Circuit (*Remmer v. United States*, 205 Fed. [2d] 277), for the Eighth Circuit (*Schuermann v. United States*, 174 Fed. [2d] 397), and for the Sixth Circuit, in the instant case, permit the Government to establish the starting point net worth by prima facie proof, in an obvious attempt to facilitate tax collection. This shifting of the burden of proof in a criminal case, involving the liberty of the taxpayer, was roundly criticized by the Courts of Appeal for the Third Circuit (*Caserta v. United States*, 199 Fed. [2d] 905, 907), and for the Fifth Circuit (*Demetree v. United States*, 207 Fed. [2d] 892).

In denying the petition herein on March 8, 1954, this Honorable Court evidently concurred in the contention of the Government that it did "not agree with petitioner that there is a conflict among the Courts of Appeal as to how far the Government must go to establish a solid net worth starting point." (p. 14 of Brief in Opposition.)

Therefore petitioner is shocked to find that on February 4, 1954, the Solicitor General of the United States filed a petition for certiorari (*United States v. Calderon*, No. 577), wherein the contentions of the Government were synopsized as follows:

"... (2) decision below is inconsistent in principle with holdings in other circuits that Government can make prima facie showing of income understatement without necessarily presenting evidence as to exact amount of cash on hand at starting point; (3) decision below constitutes substantial obstacle to effective enforcement of internal revenue laws." 22 U. S. Law Week 3218 (February 23, 1954)

In this petition (*Calderon*) the second contention of the Government is directly identical with the main contention in the instant petition. And the third contention is the

very principle which was decried in *Caserta v. United States, supra*, and *Demetree v. United States, supra*, as subordinating individual rights to governmental convenience.

Evidently the Government also now agrees that the conflict should be settled, and that the time has come for this Court to explain *United States v. Johnson*, 319 U. S. 503, and thus to bring uniformity to the trial of net worth tax cases.

Petitioner respectfully represents that the granting of certiorari in *United States v. Calderon, supra*, and the clarification of *United States v. Johnson, supra*, will have little significance to this petitioner, if such actions are taken after this petitioner has begun to serve his sentence. Petitioner respectfully submits that this Honorable Court should revoke its order of March 8, 1954, denying certiorari, and should grant certiorari, or should at least withhold decision on the instant petition until the Court disposes of *United States v. Calderon*, No. 577.

Respectfully submitted,

ROBERT N. GORMAN,
STANLEY A. SILVERSTEEN,
Attorneys for Petitioner,
808 Traction Building,
Cincinnati 2, Ohio.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1954

No. 18

DAVID FRIEDBERG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

ROBERT N. GORMAN,
STANLEY A. SILVERSTEEN,
JAMES W. HENGELBROK,
Attorneys for Petitioner,
808 Traction Building,
Cincinnati 2, Ohio.

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Other Authorities:

Counsel for the Damned, Hawley and Potts; J. B. Lippincott Company, 1953; pages 319-320	3
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1954

No. 18

DAVID FRIEDBERG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

While ordinarily this Court does not reverse itself, we believe when it is shown that this Court founded its decision on an erroneous premise, it will not hesitate to grant a rehearing. It is for the reason that we wish to point out in this petition that this Court misconstrued the instructions given by the trial court as well as giving improper inferences to the facts.

REASONS FOR GRANTING REHEARING

A. The Supplemental Instructions

The supplemental instruction of the District Court was that the jury should make "a sincere effort to compromise

and adjust" their differences, which the jury did shortly after receiving this instruction. This Court in its opinion found that this instruction was "unfortunate," and then ended the opinion by saying "we can hardly conclude this error is sufficient ground for reversal." (Emphasis added.)

The Court bases this conclusion on its statement that "we do not think it misled the jury," and on the fact that no objection was made to the charge. Actually the "thought" of the court that it did not mislead the jury is clearly erroneous. The jury was deadlocked during the second day of deliberation, unable to make a decision, when the court urged them "to compromise and adjust their differences." Within a short time they did just that by returning a verdict on the first count of not guilty (1944) and of guilty on counts 2, 3 and 4 (1945, 1946 and 1947). Realizing that the entire controversy was over the starting net worth, it is difficult to reconcile an acquittal for the year 1944 with the theory of the government. In a similar type of case Judge Yankwich refused to accept that type of compromise verdict. See *United States v. George L. Allen* (S. D. Cal.), Prentiss Hall, par. 72,784; 1950 C. C. H. 9494. The only possible way to justify the verdict is that it was a pure compromise, and the thought of the court that it did not mislead the jury is unsupported in every respect. Is this Court to uphold a compromise verdict merely because by some process of reasoning it thinks a supplemental erroneous charge might not have affected the verdict of the jury, when the facts point contrariwise?

The court also says that the "petitioner disclaimed any intent to make the instruction now attacked a ground for a new trial." That statement is not altogether accurate, and should read that "counsel for the petitioner" disclaimed any intent to make the instruction a ground for new trial. The motion for acquittal specifically predicated error on the improper instruction (R. 663), and then dur-

ing oral argument, counsel for petitioner foolishly abandoned the point.

However, even with this disclaimer by counsel, the trial court still apparently felt the instruction affected the verdict of the jury (R. 661-663). At the time of sentence the court said:

“The case was well tried, it was well argued, and if *the Court committed any error in its instructions an upper court will have to determine that fact.*” (R. 667.) (Emphasis added.)

The only objection to the instructions raised in the motion for new trial was that against the supplemental instruction, which this Court now holds was erroneous, but such a holding still deprives the petitioner of his liberty.

The holding of this Court is reduced to the proposition that a lawyer can waive away his client's liberty by verbally withdrawing a clear specification of error. The danger of such a ruling, particularly when the trial judge expressed doubt and wanted it reviewed, is best illustrated in the argument made by George F. Vanderveer as set forth in *Counsel for the Damned* at pages 319-320:

“However, a more suitable epitaph for George Vanderveer may have been a statement he made before the court, in a trial conducted some years before his death. A young Indian deck hand on one of the Puget Sound steamers had been convicted of the rape of a white woman and sentenced to death. Believing that the young man had lacked adequate legal representation in the lower court, practically an entire tribe had descended upon Vanderveer's office and demanded that he carry the appeal to the Circuit Court of Appeals in San Francisco. Vanderveer accepted the assignment and in his arguments in San Francisco he attempted to show that improper evidence had been admitted in the original trial.

"One of the Justices on the Circuit bench halted Vanderveer in the midst of his arguments and pointed out that there had been no exception requested by the defense in the lower court and that thus there could be no charge of judicial error upon the point in question. "White with anger, Vanderveer demanded of the court: 'Would you hang a man because his lawyer failed to except to a ruling?'"

"Chief Judge Rudkin roared with laughter at the pointed irony of the barb, and a new trial subsequently was ordered. In the new trial, Vanderveer defended the young Indian and he was acquitted."

We submit just as the Indian should not be hanged for the mistake of his lawyer, neither should Friedberg be imprisoned because of a mistaken admission by counsel.

B. The Holding on the Starting Point Evidence in This Case and in the CALDERON Case

In the instant case, this Court found evidence from which a jury could reasonably have concluded that, prior to 1939, petitioner did not possess a large reserve of cash. The first indictment year was 1944; and, under the theory of the prosecution, it was impossible for petitioner to have any cash until the close of 1945 (Ex. 2, R. 691).

In *United States v. Calderon*, No. 25, this Court found proof that he was impoverished by the depression, "that he was working for his meals and \$8 a week in 1935," and that he did not discontinue this job until 1939. The first indictment year was 1946, and the respondent there was credited with cash on hand at the close of 1944.

Up to this point in the evidence, it would appear that the two cases are identical. However, in *Friedberg*, a net worth conviction was found justified, while in *Calderon* the use of the net worth method was held unjustified (although other, independent, evidence did establish the crime directly). The two divergent holdings on the starting point

net worth, or cash, position, requires a close examination of the 1939-1945 evidence in both cases, to determine if this intervening evidence distinguishes the two cases sufficiently to justify such opposite results.

In *Friedberg*, the evidence for the period 1939-1945 was as follows:

1) Income tax returns for 1942, 1943, and for the indictment years of 1944-1947.

2) Certificate of Assessments and Payments, Income Tax, for 1939, 1940, 1941.

3) A *nulla bona* return in 1940 on a \$13.76 judgment.

4) Corporate dissolution in 1941, and subsequent operation of business by petitioner as sole proprietorship.

In *Calderon*, the evidence for the same intervening period was:

1) Income tax returns for 1944 and 1945, as well as for the indictment years.

2) Income tax returns for 1941 and 1942, which respondent (*Calderon*) admitted (*Br.*, p. 57) were offered by respondent.

3) As this Court found, "the records were shown to be incomplete."

4) *Calderon* started in business in 1935 with only two machines (*R.* 153-154), did not make a large investment in machines until 1946 (*R.* 64-65, 91, 164-165), and, as this Court found, "it was not until 1947, the middle of the prosecution period, that his business became sufficiently large to require the full time of his accountant."

Friedberg had always earned over \$50.00 per week; *Calderon* worked "for his meals and \$8 a week" until 1939. However, on the 1939-1945 evidence just related, this Court held that the net worth method in *Friedberg* could sustain a conviction, but that the net worth method in *Calderon* could not sustain a conviction.

Petitioner respectfully represents that the two holdings are inconsistent, and that the evidence in *Friedberg* was not sufficient to permit the jury to employ the net worth method. This last conclusion is buttressed by the absurd finding which is forced upon the jury by the net worth method as used in 1947. From September 25, 1947, the petitioner knew that he was being investigated for income tax deficiencies (R. 407 et seq.). He did not file his 1947 return until January 15, 1948, four months later (Ex. 1-E; R. 680). The use of the net worth method forces the jury to find that he was so stupid as to conceal \$37,553.86 of his income on his 1947 return four months after he learned that he was under investigation. No evidence was ever offered to show how petitioner could have possibly concealed such a large sum from profits from the small tailoring shop. It is truly inconceivable.

CONCLUSION

Petitioner respectfully represents that the "unfortunate" and erroneous instruction to "compromise and adjust your differences" did mislead the jury, and that such "error" could not be waived by counsel. The use of the net worth method was less substantiated by the evidence in *Friedberg* than it was in *Calderon*, wherein this Court held that *Calderon* could not be convicted under that method. A rehearing should be granted.

ROBERT N. GORMAN,
STANLEY A. SILVERSTEEN,
JAMES W. HENGELBROK,

Attorneys for Petitioner,
808 Traction Building,
Cincinnati 2, Ohio.

CERTIFICATE

I, Robert N. Gorman, one of the attorneys for petitioner, hereby certify that this petition for rehearing is presented in good faith and not for the purpose of delay.

ROBERT N. GORMAN,
Counsel for Petitioner.